

2A

*In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

**Civil Appeal No. CA-7/13 of 2022**

**Date of institution: 14.03.2022**

**Date of decision: 18.06.2022**

1. Akhtarman Shah through legal heirs  
1/1. Aqalman, 1/2. Sher Alam, 1/3. Muhammad Imran, 1/4. Majeed Akram, 1/5. Mumtaz, 1/6. Seraj Khan, 1/7. Muhammad Roman, 1/8. Afzal Man Shah, 1/9. Najeeb Ullah, 1/10. Naqeeb Ullah, 1/11. Mst. Fatima Bibi, 1/12. Mst. Aaisha Bibi, 1/13. Mst. Bismillah Jan and 1/14. Hayat Bibi
2. Wali Man Shah through legal heirs  
2/1. Mst: Saleem Bibi, 2/2. Shah Nawaz, 2/3. Jamshed Khan, 2/4. Bibi Shazia, 2/5. Bibi Shahida and 2/6. Saima Bibi
3. Gul Zameen Shah son of Ghulam Shah
4. Marwat Shah through legal heirs  
4/1. Mst: Bano, 4/2. Quwat Shah, 4/3. Haji Badshah, 4/4. Minat Shah, 4/5. Aaj Badshah
5. Amjad Ullah son of Khukaliman Shah, all residents of Rabia Khel, District Orakzai.

..... (Appellants)

...Versus...

1. Muhammad Qasim through legal heirs  
1/1. Mst: Marjan, 1/2. Muhammad Habib, 1/3. Abdul Wali, 1/4. Abdullah, 1/5. Mst. Akhter Marjana and 1/6. Fazal Khanan, all residents of Qaum Rabia Khel, Tappa Ayaz Khel, village Khe Kadda, District Orakzai


..... (Respondents)

**Appeal against Judgement, Decree and Order dated 12.02.2022 in Civil Suit No. 342/1 of 2020.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellant against the

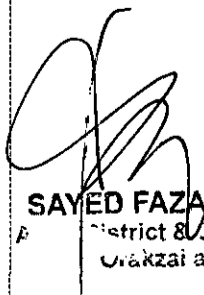
Judgment/Decree & Order dated 12.02.2022, passed by learned Senior Civil

  
**SAYED FAZA WADOON**  
Addl. District & Sessions Judge  
Orakzai at Hangu

Judge, Orakzai in Civil Suit bearing No.342/1 of 2020; whereby, the suit of the respondents/plaintiffs with the title of Muhammad Qasim Vs Akhterman Shah etc. was decreed.

2. Brief facts of the case are such that the plaintiff Muhammad Qasim (respondents herein) has filed suit against the defendants (appellant herein) for declaration-cum-mandatory injunction and possession to the effect that the plaintiffs is owner in possession of the disputed property measuring 10 Jerib along with adjacent hilly area situated at Khee Kada Ismail Zai of District Orakzai which was delivered possession to the defendants for cultivation on the basis of half share in produces. That the defendants had been paid the half share of produce to the plaintiff till the year 1991-92 and thereafter, did not pay the same till year 2002-03. That due to Talibanization and Military Operation in Orakzai, plaintiffs along with their families shifted to Hangu while disputed property remained uncultivated for long time. When the law-and-order situation has been improved in 2016, plaintiffs intended to cultivate disputed property but defendants restrained them from doing so and started claim of ownership over disputed property. Responding to such claim, plaintiffs submitted an application in the Court of Assistant Political Agent, Orakzai (APA Orakzai hereinafter) on 08.02.2017. Jirga was constituted by APA Orakzai. The members of Jirga decided the matter in favour of plaintiffs and defendants were held wrong doers. Defendants were time and again approached not to interfere in disputed land but was of no use that necessitated presentation of suit.

3. Defendants on appearance, raised so many legal and factual objections. It was specifically pleaded that they are owners in possession of disputed land and plaintiffs having no property or residence in the area are aliens.

  
**SAYED FAZAL WADOOD**  
District & Sessions Judge  
Orakzai at Hangu


4. The material preposition of facts and law asserted by one party and denied by other have separately been put into following issues by the then learned Trial Judge.

- i. Whether plaintiff has got a cause of action?
- ii. Whether disputed property is the ownership of plaintiff, which was given to the defendants for cultivation on the basis of half share?
- iii. Whether defendants are owner in possession of disputed property since time of their ancestors?
- iv. Whether plaintiff is entitled to the decree as prayed for?
- v. Relief?

5. Opportunity of leading evidence was accorded to both the parties. Seizing the opportunity, plaintiff produced as much as four persons in evidence and thereafter closed it. On turn, defendants had also produced two persons in support of their plea taken in defense. Learned counsel representing parties have been heard and suit was decreed which is impugned by the defendants in instant civil appeal.

6. Mr. Shaheen Muhammad Advocate for appellants argued that suit was barred on different accounts like non-joinder, form of suit and estoppel. The evidence was deficient and grant of decree was result of non-reading and mis-reading of evidence. The impugned judgement is based on non-appreciation of evidence and wrong application of law. The appellants are owners and had never ever paid produces. The plaintiff has no documentary evidence of his title and suit is based on assumptions and presumptions. He concluded that the Judgment in question may be set aside for being illegal and appeal in hand be allowed.

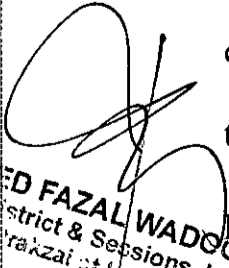
7. Mr. Fazal Malik Kaka Khel Advocate representing respondents resisted the stance of opponent by stating that the predecessors of the plaintiffs have

  
**SAYED FAZAL WAHAB**  
 Addl: District & Sessions Judge  
 Orakzai at Hangu

handed over the vacant possession of the suit property to the predecessor of the defendants for protection and cultivation of the land which was continued by the defendants without payment of produces. The plaintiffs have rightly approached the competent forum of APA Orakzai for redressing grievances which was allowed. The appellants have indulged the plaintiffs in rounds of litigation and protracting it for no justifiable reason with mala fide to continue adverse possession. The contents of the plaint have been negated with evasive denial without taking specific plea of defense. He prayed for dismissal of appeal.

8. The apple of discord between the parties that had given birth to instant litigation, is that defendants/appellants are claiming ownership in possession of the property and terming the plaintiffs/respondents as aliens not only in regard to disputed land but to the area as a whole. The plaintiffs/respondents on the other hand are claiming ownership and terming the possession of the opponent under tenancy that has been continued due to Talibanization. Now the point for determination in instant appeal is that whether plaintiffs have established probability in their favor which shifted burden to the defendants and defendants had failed to discharge owners through cogent evidence or otherwise?

9. PW-1 is the witness of fact that the matter in issue of suit was earlier pending in the Court of APA, Orakzai. Two persons each have been nominated by the parties as their Jirga members and he was one of the two members officially nominated as mediators by APA Orakzai. He produced all documents of such proceedings as Ex.PW-1/1. He had confirmed the fact that they have concluded the matter between the parties by holding that the plaintiffs will produce ten (10) persons for administering special oath regarding their ownership over the property and dispute. Both the parties had

  
**SAYED FAZAL WADOOD**  
District & Sessions Judge  
Orakzai at Hangu

agreed and date was fixed for administration of special oath. The plaintiffs produced required strength of ten persons for administering oath but the defendants detracted and thus the Jirga members have declared them as wrong doer in accordance with the local customs. He along with other members of the Jirga recorded statements regarding completion of proceedings and verdict of the Jirga in the Court of APA Orakzai. PW-2 is the second member of the Jirga who was in status of appointee of the plaintiff as Jirga member. He owned his signature over the document being part of Ex.PW-1/1 as correct and testified the proceedings as well as conclusion drawn by local Jirga in favor of plaintiffs. PW-3 is independent witness testifying the fact that proceedings and verdict of the Jirga members have not been made award of the Court due to merger of erstwhile FATA into the province of Khyber Pakhtunkhwa. The direct evidence supported by documentary evidence is sufficient to establish preponderance of probability in favor of plaintiffs as there is no land record and oral evidence of direct nature is considered sufficient for discharge of burden of proof articulated in Article-117 of the Qanun-e-Shahadat Order, 1984.

10. Preceding paragraph describes that preponderance of probability has been established by the plaintiffs that had shifted the burden to defendants. The defendant's stance is evasive denial which is being considered admission on part of defendants. Order-8 Rule-4 and 5 of the Code of Civil Procedure, 1908 prescribes that non specific and evasive denial of the fact would be deemed to have been admitted. Reliance can be placed on Karam Din etc. vs Muhammad Idrees reported as 2010 CLC 246 Lahore that deals the issue of evasive denial as an admission. Similarly, if the contention of defendants that plaintiff has no nexus with the property is considered as specific defense plea; even then, they have failed to produce any type of

  
**SAYED FAZAL WADOOD**  
 District & Sessions Judge  
 Orakzai at Hangu

documents or oral evidence in support of their ownership. They were bound under the law to produce evidence regarding their ownership but they failed to do so. The witness examined as DW-1 is the attorney of defendants who categorically stated that no proof of the ownership of disputed property. DW-2 belongs to some adjacent village but he is not the witness of ownership or possession of the defendants. This can safely be concluded that the shifted burden of proof has not been discharged by defendants.

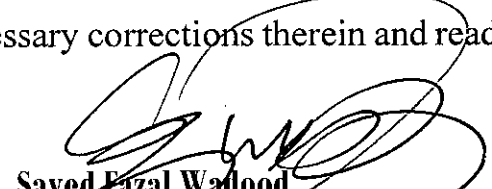
11. For what has been above, it is being held that the learned Trial Court has properly appreciated the evidence and rightly passed the impugned Judgement and Decree dated 12.02.2022. Consequently, as the Judgement under appeal does not warrant interference; therefore, the appeal in hand stands dismissed. Costs shall follow the events. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

12. Announced in the open Court  
17.06.2022

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment consists of six (06) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela