

*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-5/13 of 2022**

**Date of institution: 26.01.2022**

**Date of decision: 08.06.2022**

Jan Muhammad, Jamshed Ullah and Wakeel Shah, all sons of Mastan Shah, residents of Qaum Mian Mela, Qaum Mishti, Tappa Darvi Khel, District Orakzai. .... **(Appellants/defendants)**

...Versus...

Rafi Ullah son of Khwaja Muhammad, Wasif Ullah son of Khwaja Muhammad, Safar Khan son of Halim Gul and Farid Ullah son of Halim Gul, all residents of Qaum Mishti, Tappa Darvi Khel, Budgor, District Orakzai..... **(Respondents/plaintiffs)**

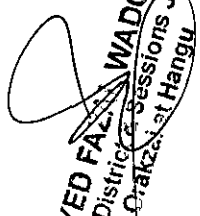
**Appeal against Judgement, Decree and Order dated 21.12.2021,  
passed in Civil Suit No. 69/1 of 2019.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellants/defendants against the Judgment, Decree & Order dated 21.12.2021, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.69/1 of 2019; whereby, suit of the respondents/plaintiffs with the title of Rafi Ullah etc. Vs Jan Muhammad etc. was decreed.

2. Briefly stated facts of the case are such that the plaintiffs Rafi Ullah etc. (respondents herein) have filed suit against the defendants (appellants herein) for declaration cum perpetual and mandatory injunction and possession against the defendants to the effect that the plaintiffs are the exclusive owners of the suit property situated at Tandori Chan, Shaho Khel, Orakzai while the defendants are the cultivators of the same on the

basis of tenancy. The predecessor of the plaintiffs had handed over the suit property for cultivation to the predecessors of the defendants along with a built up house for their residence some decades back. The plaintiffs being owners had opted to cancel the tenancy which was denied and necessitated presentation of an application before the then Assistant Political Agent, Lower Orakzai (APA Orakzai henceforth) for declaration of the plaintiffs as owners of the suit property along with the built-up house and handing over back the possession of the same through ejection of the defendants. That the then APA appointed a Jirga and in the light of Jirga decision, an Order was passed on 10.11.2014; whereby, the declaration with possession and ejection of the defendants from the suit property was granted as relief prayed for and consequential relief. That the said decision of the APA Orakzai was upheld by the learned Commissioner, Kohat Division vide Order, dated 06.08.2015; but afterwards, the same decision was set aside and the case was remanded back to the Trial Court (APA Orakzai) by the then FATA Tribunal vide Order dated 06.11.2017. Additional issues have been framed and before the completion of proceedings, the merger of FATA was finalized that result into transfer of case to Civil Court. The plaintiffs moved the Court with an application for withdrawal of the suit for permission to file new suit which was allowed vided Order No. 04, dated 25.09.2019 of the then learned Civil Judge-II, Orakzai.

  
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Addl: District Sessions Judge  
Orakzai, FATA

3. Defendants/appellants on appearance objected the suit on various legal as well as factual grounds in their written statement. It was specifically pleaded that neither plaintiffs are owners of the suit property

nor the defendants are tenants. Defendants are owners in possession of the suit property and plaintiffs have got no nexus with it. It was added that the petition to APA Orakzai was baseless with the same magnitude as is the present suit.

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 plaintiffs have got a cause of action?*
- ii. *Whether the plaintiffs are estopped to sue?*
- iii. *Whether the suit of the plaintiffs is time barred?*
- iv. *Whether the suit property is the ownership of the plaintiffs and the defendants have nothing to do with the suit property rather they are the mere Kashtkaran (tenants) of the suit property since their predecessor?*
- v. *Whether plaintiffs are entitled to the possession of the same?*
- vi. *Whether plaintiffs are entitled to the decree as prayed for?*
- vii. *Relief?*

5. Opportunity of leading evidence was accorded to both the parties. Seizing the opportunity, plaintiffs produced as much as four persons in evidence and thereafter closed it. On turn, defendants had also produced three 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. Saleh Shah Advocate for appellants argued that suit was barred on different accounts like limitation, non-joinder, form of suit and

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Advocate & Sessions Judge  
Orakzai at Jhang

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. He concluded that the Judgment in question may be set aside for being illegal and appeal in hand be allowed.

7. Mr. Ihsan Ullah Khan Advocate representing respondents resisted the stance of opponent by stating that the predecessors of the plaintiffs have 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. He prayed for dismissal of appeal.

8. The parties have admitted some facts either in their pleadings or in evidence. Parties are admittedly belonging to Tribe of Mishti Orakzai. They are belonging to the same sub tribe of Darvi Khel. Plaintiffs are belonging to Hassan Khel and defendants are admittedly belonging to Bakhawar Tabar; both sharing common predecessor in interest of Darvi Khel. The suit property has been decreased by 25 to 30 percent due to abluvion and spurts for being adjacent to river.

9. The apple of discard between the parties that had given birth to instant litigation, is that defendants/appellants had started preparations for raising further construction in disputed land. The ownership of appellants

**SAYED FARUK HANIF KHAN**  
District & Sessions Judge  
Orakzai, Hangu

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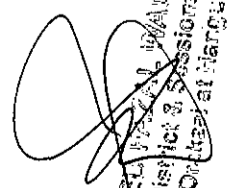
is being termed as that of tenant; whereas, ownership of the respondents/plaintiffs has been denied. Whether plaintiffs have no nexus with the ownership of the disputed property which has wrongly been granted decree is the prime point of determination in pending appeal.

10. Keeping in view the admitted facts discussed in paragraph No.8 followed by point for determination mentioned in paragraph No.9 of this Judgement, the pleadings and evidence of the parties, when assessed, is reflecting that the ownership of plaintiffs is proved through direct oral evidence of independent witnesses examined as PW-03 and PW-04. They have categorically testified that the property in dispute is ownership of the forefathers of the plaintiffs which devolved upon the plaintiffs as inherited legacy. It is worth mentioned that both the witnesses have been given positive suggestions in cross examination which confirms the ownership of the plaintiffs and the status of defendants as tenants and thus operate as admission on part of defendants. This direct evidence of the plaintiffs is supported by admissions on part of defendants had sufficiently established probability in favor of plaintiffs and successfully shifted the onus of proof to defendants. The statement of defendants in previous round of litigation regarding readiness to purchase suit property against sale consideration of PKRs: 3500000 is another area that may be taken into consideration or at least cannot be excluded from consideration and thus strengthen the probability so established. The defendants has produced one witness (DW-02) from District Nowshera who is mere witness of possession of defendants. The other witness examined as DW-03 is also the witness of possession who speaks noting about the

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District Sessions Judge  
District Nowshera

ownership in his examination. The possession of defendants is admitted fact and was not required to be proved at all. Hence, it is very clear to hold that the probability established by the plaintiffs has not been shattered and the plea taken in defense has not been proved. As far as legal questions raised in Appeal are concerned, the matter was pending adjudication in the Court of learned APA Orakzai before the merger of FATA and has promptly been referred to the Civil Court when civil law has been extended to the region; therefore, question of limitation is out of question that has mechanically been inserted without justification. Similarly, question of non-joinder or mis-joinder is not fatal per se. The Court is empowered by law to add or delete the person wrongly impleaded or not arrayed as party. There was no need of either adding or deleting any party as all the necessary parties are on panel and objection so raised is liable to be over ruled. Moreso, every material preposition of fact and law asserted by one party and denied by other has separately been put into issue and determined by learned Trial Judge and thus ground of Appeal regarding non-determination of every issue is just fabrication of paper having no factual and legal background.


11. For what has been above, it can safely be concluded that the learned Trial Court has properly appreciated the evidence and rightly passed the impugned Judgement and Decree dated 21.12.2021. 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

  
 SAQIB KHALID WAJOOD  
 Addl. District Sessions Judge  
 Orakzai District

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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  
08.06.2022

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela

**CERTIFICATE.**

Certified that this Judgment is consisting upon seven (07) pages; each of which has been signed by the undersigned after making necessary corrections therein and red over.

  
Sayed Fazal Wadood,  
ADJ, Orakzai at Baber Mela