

IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I ORAKZAI AT BABER MELA

Civil Suit No. 11/1 of 2020
 Date of Institution 10.02.2020
 Date of Decision: 23.02.2022

1. *Minaz Gul S/O Qamber Ali, R/O Qoum Ali Khel, Tappa Panjam, Village Dapper, Tehsil Upper, District Orakzai.*

(Plaintiff)

VERSUS

1. *Shehzad Gul Qamber Ali, R/O Qoum Ali Khel, Tappa Panjam, Village Dapper, Tehsil Upper, District Orakzai.*
 2. *Deputy Commissioner Orakzai.*

(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL AND
 MANDATORY INJUNCTION AND RECOVERY**

JUDGEMENT:
23.02.2022

Plaintiff Minaz Gul has brought the instant suit for declaration-cum-perpetual and mandatory injunction and recovery against the defendants. That the plaintiff and defendant no. 01 are real brothers, who are the residents of village Dapper, Tehsil Upper, District Orakzai. That the suit house and the suit land is the joint ownership of the parties since their ancestors. That the plaintiff and defendant no. 01 have been declared as owners in possession of the equal shares of the suit house and land according to the jirga deed, Dated: 15.07.2008. That after the CLCP survey of the demolished houses by the defendant no. 02, the defendant no.

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 Orakzai at (Babar Mela)

01 represented himself as the owner of the house and fraudulently received the amount Rs. 400,000/- and deprived the plaintiff of his half share in the said amount, which is illegal. That the defendant no. 01 is liable to pay the half of the amount of survey i.e Rs. 200,000/- according to the jirga deed, Dated: 15.07.2008 w.r.t the house of the plaintiff. That according to the of jirga deed, Dated: 15.07.2008, the defendant no. 01 is bound to pay Rs. 200,000/- as fine for violation of the same and that the defendant is liable to pay the amount of Rs. 400,000/- in total. That the defendants were asked time and again to admit the claim of the plaintiff but they refused, hence, the present suit.

Defendants were summoned through the process of the court, in whom the defendant no. 01 appeared and contested the suit by filing written statement, wherein he raised certain factual and legal objections while the defendant no. 02 remained disappeared, hence, placed and proceeded ex-parte.

Divergent pleadings of the parties were reduced into the following issues;

1. Whether the plaintiff has got a cause of action?
2. Whether the Plaintiff is estopped to sue?
3. Whether the suit of the plaintiff is time barred?

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4. Whether the plaintiff is entitled to half of the suit property as per the Jirga decision Dated: 15.07.2008?
5. Whether the plaintiff is entitled to half of the amount of Rs. 400,000/-received by the defendant no. 01 in the CLCP survey of the suit house as per the jirga decision Dated: 15.07.2008
6. Whether the plaintiff is entitled to the decree as prayed for?
7. Relief.

Parties were given ample time and opportunity to produce their respective evidence.

The plaintiff produced the one Syed Lal Qasim, who appeared as PW-01, who endorsed the jirga between the parties conducted by him. Further, Mr. Meer Askar appeared as PW-02, who also endorsed the jirga conducted by him between the parties. At the end, the plaintiff himself appeared as PW-03, who produced the jirga deed as Ex.PW-3/1 and further fully narrated the same story as in his plaint.

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Orakzai (Babar Mola)

The defendant no. 01 in order to counter the claim of the plaintiff, appeared himself only as DW-01, who stated that the suit house is built by him and is his sole ownership.

My issue wise findings are as under:

Issues No. 02:

The defendant no. 01 in his written statement raised the objection that the plaintiff is estopped to sue but

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later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 03:

The defendant no. 01 in his written statement raised the objection that suit of the plaintiff is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 10.02.2020. Thus, the same is well within time.

The issue is decided in negative.

Handwritten signature and text:
Minaz Gul
Shehzad Gul
Orakzai at (FATA)


Issues No. 04 & 05:

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

The Plaintiff alleged in his plaint that the plaintiff and defendant no. 01 are real brothers, who are the residents of village Dapper, Tehsil Upper, District Orakzai. That the suit house and the suit land is the joint ownership of the parties since their ancestors. That the plaintiff and defendant no. 01 have been declared as owners in possession of the equal shares of the suit house and land according to the jirga

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deed, Dated: 15.07.2008. That after the CLCP survey of the demolished houses by the defendant no. 02, the defendant no. 01 represented himself as the owner of the house and fraudulently received the amount Rs. 400,000/- and deprived the plaintiff of his half share in the said amount, which is illegal. That the defendant no. 01 is liable to pay the half of the amount of survey i.e Rs. 200,000/- according to the jirga deed, Dated: 15.07.2008 w.r.t the house of the plaintiff. That according to the of jirga deed, Dated: 15.07.2008, the defendant no. 01 is bound to pay Rs. 200,000/- as fine for violation of the same and that the defendant is liable to pay the amount of Rs. 400,000/- in total. That the defendants were asked time and again to admit the claim of the plaintiff but they refused, hence, the present suit.


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Orakzai at (Babar Mata)

The plaintiff produced jirga deed, Dated: 15.07.2008, which is Ex.PW-3/1 through which, the plaintiff has taken special oath that he is the owner of the half of the suit property and the same has been decided accordingly. He also produced 02 marginal witnesses of the said jirga deed. Thus, the plaintiff established his ownership to the extent of half of the suit property because it was a very strong custom having strong social recognition in the Erst-While FATA to decide all the issues through jirga and special oath.

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Also, the defendant has denied the fact that the plaintiff is his brother. He admitted that he could not produce any witness regarding the fact that the suit house is built by him and that he has no witness in this respect. Further, admitted that special oath has taken place between us and that the plaintiff had taken special oath regarding the fact that he is the owner of the half of the property at Tirah.

Thus, in the light of the aforesaid findings, the plaintiff established his ownership of half of the suit property through oral and documentary evidence and through admission of the defendant no. 01 that the plaintiff took special oath regarding half of his ownership in the suit property.

So far as, the entitlement of the plaintiff to the extent of half of the amount of Rs. 400,000/- received by the defendant no. 01 in the CLCP survey is concerned, I am of the opinion that once it is established that plaintiff is the owner of the half of the suit property including the suit house and there is no denial of the fact that the defendant no. 01 have received an amount of Rs. 400,000/- in CLCP survey w.r.t the suit house jointly owned by the parties, then the plaintiff is also entitled to receive half of the amount received by the defendant no. 01 in CLCP survey.

Thus, in the light of the aforesaid findings, both these issues are decided in positive.

Issues No. 01 &06:

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

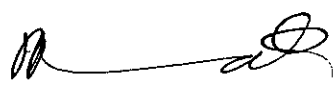
As sequel to my above issue-wise findings, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for *to the extent of prayer (Alif) and prayer (Bay)(01) subject to the deposit of the court fee within one month of this order while dismissed to the extent of Prayer (Bay)(02)*. Therefore, both these issues are decided in positive.

Relief

As sequel to my above issue-wise findings, suit of the plaintiff is hereby decreed as prayed for *to the extent of prayer (Alif) and prayer (Bay)(01) subject to the deposit of the court fee within one month of this order while dismissed to the extent of Prayer (Bay)(02)* . Costs shall follow the event.

File be consigned to the Record Room after its necessary completion and compilation.

Announced
23.02.2022


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.

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CERTIFICATE

Certified that this judgment of mine consists of **Eight** (08) pages, each has been checked, corrected where necessary and signed by me.



(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela.