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IN THE COURT OF REHMIAT ULLAH WAZIR,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 345/1 of 2020
Date of Institution: 15.10.2020
Date of Decision: 31.05.2022

1. *Muhammad Sajid s/o Gul Syed*

R/O Pakka, Qoum Mamuzai, Tappa Adho Khel, District Orakzai

(Plaintiff)

VERSUS

1. *Muhammad Rauf s/o Muhammad Rafique*

2. *Muhammad Saeed s/o Muhammad Kamal*

Both R/O Pakka, Qoum Mamuzai, Tappa Adho Khel, District Orakzai

3. *Muqaddar Shah s/o Gul Syed R/O UAE*

4. *Nazia Bibi d/o Sabir Gul R/O Muhammad Khwaja Camp, Hangu*

5. *Shaqiba Bibi w/o Muhammad Zia Ul Haq R/O Sadda, Marghan, Kurram*

(Defendants)

**SUIT FOR DECLARATION CUM PERPETUAL AND
MANDATORY INJUNCTION AND POSSESSION THROUGH
DEMOLITION OF ANY ILLEGAL CONSTRUCTION BY THE
DEFENDANTS**

JUDGEMENT:

31.05.2022

Plaintiff Muhammad Sajid brought the instant suit

for declaration cum perpetual and mandatory injunction and

possession through demolition of any illegal construction by

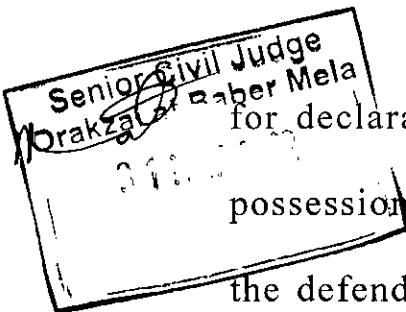
the defendants to the effect that plaintiff is the owner of the

suit house along with other brothers and sisters. That the suit

property is inherited by the plaintiff and his others brothers

and sisters from their father namely Gul Syed, the late, who

inherited the same from his father namely Yar Zada, the late.



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That the plaintiff along with other family members shifted from the suit house to District Hangu as a result of militancy/Talibanization in Orakzai and vacated the suit house. That by taking undue advantage of the absence of the plaintiff, now the defendant no. 1 and 2 have taken illegal possession of the same and are doing construction over the same despite the fact that they have nothing to do with the suit property. That the plaintiff being owner of the suit house have received an amount of Rs. 400,000/- in CLCP Form No. 146512, Dated: 01.09.2019, which is a solid proof of ownership of the plaintiff. That the defendant No. 01 and 02 were asked time and again not to take illegal possession of the suit property and not to do construction over the same but they refused, hence, the present suit.

Defendants were summoned through the process of the court, in whom, the defendants no. 01 and 02 appeared and contested the suit by filing written statement, wherein they raised certain factual and legal objections. The rest of the defendants have been properly served and they failed to appear before the court but they failed to appear before the court, hence, they have been placed and proceeded ex-parte.

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

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1. Whether the plaintiff has got cause of action?
2. Whether disputed house is the inherited property of plaintiff and defendant No. 3, 4 and 5?
3. Whether disputed house is the ancestral property of defendant No. 1 and 2, which was temporarily given to the father of plaintiff due to his services for the ancestors of defendant No. 1 and 2?
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

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

The plaintiff produced witnesses in whom the one Ajmal Khan, record keeper, DC office Orakzai, appeared as PW-01, who produced CLCP form in favour of the plaintiff, through which the plaintiff received compensation for the damaged house/suit house along with pictures of the team and

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copy of the CNIC of the plaintiff, which all are exhibited as Ex.PW-1/1. Further, the one Khan Syed, a family member of the plaintiff, appeared as PW-02, who narrated the same story

as in the plaint. The One Muqaddar Shah, the brother of the plaintiff appeared as PW-03, who also supported the stance of the plaintiff by narrating the same facts as in the plaint.

During cross examination, he asserted the fact that after military operation, the plaintiff went back to the area and constructed a room in the suit house. He also asserted the fact

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that his father died in the year 2009 and has been buried in their ancestral graveyard. The plaintiff himself appeared as PW-04 and he asserted the facts mentioned in the plaint. During cross examination, he asserted that on the East of the suit house, there are 04 fields owned by them and on the other side of the said house there is a plot owned by them. That the defendants no. 1 and 2 are not doing any construction rather they are about to do the same. That during CLCP survey of the suit house, the Maliks of the area were present and on their verification, I got the compensation. At the end, the one Fazal Badshah, the uncle of the plaintiff appeared as PW-05 and who also supported the plaint of the plaintiff.

In order to counter the claim of the plaintiff, the contesting defendants also produced witnesses in whom the defendant no. 01 himself appeared as DW-01, who fully denied the claim of the plaintiff but admitted in his cross examination that the construction of the suit house was done by the one Yar Zada (the grandfather of the plaintiff) and his sons. That they have filed no recovery suit against the plaintiff on account of receiving the CLCP amount and have not filed any application before the Tehsildar etc for the cancellation of the survey in the name of the plaintiff. Further Mr. Muhammad Jalil, appeared as DW-02, who also

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supported the stance of the contesting defendants but admitted in his cross examination that so far as, he remembers, the grandfather of the plaintiff namely Yar Zada was residing in the suit house and that the plaintiff also belongs to Adho Khel tribes and that he is not a witness to a Jirga between the predecessors of the parties regarding the suit house. The one Shah Fahad Qureshi appeared as DW-03, who also supported the stance of the contesting defendants but admitted in his cross examination that he has not seen the suit house and that he is not a witness to the fact that the suit house was given to the plaintiff by the contesting defendants for temporary residence and that no Jirga regarding the suit house has taken place in his presence. The one Aziz Ur Rehman, appeared as DW-04, who fully supported the stance of the contesting defendants but admitted in his cross examination that he is not a witness to a Jirga regarding the house between the parties and that so far as he remembers, the one Yar Zada was residing in the suit house and that the contesting defendants were present at the time of CLCP survey and that there is a separate graveyard of the Qoum Nayan, downward of the suit house.

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My issue wise findings are as under:

Issues No. 02 & 03:

Both the issues are inter-linked, hence, taken together for discussion.

The plaintiff alleged in his plaint that he is the owner of the suit house along with other brothers and sisters. That the suit property is inherited by the plaintiff and his others brothers and sisters from their father namely Gul Syed, the late, who inherited the same from his father namely Yar Zada, the late. That the plaintiff along with other family members shifted from the suit house to District Hangu as a result of militancy/Talibanization in Orakzai and vacated the suit house. That by taking undue advantage of the absence of the plaintiff, now the defendant no. 1 and 2 have taken illegal possession of the same and are doing construction over the same despite the fact that they have nothing to do with the suit property. That the plaintiff being owner of the suit house have received an amount of Rs. 400,000/- in CLCP Form No. 146512, Dated: 01.09.2019, which is a solid proof of ownership of the plaintiff. That the defendant No. 01 and 02 were asked time and again not to take illegal possession of the suit property and not to do construction over the same but they refused, hence, the present suit.

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The whole of the suit turns around 02 facts, the first one is that of the plaintiff who alleges that he along with other brothers and sisters is the owner of the suit house, the second one is the fact alleged by the contesting defendants that plaintiff is not the owner of the land beneath the suit house rather he belongs to a "Nayan/hairdresser" family, whose grandfather namely Yar Zada was given the land beneath the suit house temporarily for building a house over the same for his shelter on account of his services provided to the predecessors of the contesting defendants and that the plaintiff has now shifted to District Hangu and the house built up by the predecessor of the plaintiff is now completely damaged and the plaintiff has got no right to assert himself as

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the owner of the land beneath the damaged house.

The plaintiff produced the record keeper of the DC Office, Orakzai, who produced the CLCP form in favour of the plaintiff, through which he received compensation for the damaged suit house along with pictures of the team conducting survey for the said purpose and copy of the CNIC of the plaintiff. The same is the only available authentic document bearing the presumption of truth in the Erst-While FATA, which prima facie establishes the fact that the plaintiff is the owner of the suit property unless rebutted. The PW-03, a brother of the plaintiff asserted the fact that after

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military operation, the plaintiff went back to the area and constructed a room in the suit house, the same establishes the fact of ownership and possession of the plaintiff regarding the suit house. He also asserted that his father died in the year 2009 and has been buried in their ancestral graveyard, meaning thereby that the family of the plaintiff have their own separate graveyard in the area, which further authenticates the ownership of landed property of the plaintiff in the area. The plaintiff himself as PW-04, who asserted that they have no "Loohay", (A traditional name for protection/shelter given by a resident to the outsider in the Erst-While FATA) with anyone in the area, this fact has not been cross examined, further, asserted the ownership of fields around the suit house and no tangible piece of cross examination in this respect is available.

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The contesting defendants were legally bound to rebut the aforesaid evidence but the defendant no. 01 as DW-01 has admitted the fact in his cross examination that the suit house was built by the grandfather of the plaintiff and his sons and that they have filed no recovery suit against the plaintiff in respect of the CLCP amount and even have not filed any application before the Tehsildar for cancellation of the said survey. The DW-02 has admitted in his cross examination that so far as, he remembers, the grandfather of

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the plaintiff was residing in the suit house and that the plaintiff also belongs to Adho Khel tribes. The PW-03 has admitted that he has not seen the suit house and he is not a witness to the fact that the suit house was given to the plaintiff by the contesting defendants for temporary residence. PW-04 has admitted in his cross examination that so far as he remembers, the grandfather of the plaintiff namely Yar Zada was residing in the suit house and further admitted that the contesting defendants were present at the time of CLCP survey of the suit house and that there is a separate graveyard of the Qoum Nayan, downward of the suit house.

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In view of the aforesaid findings, the plaintiff established the fact that the Nayans/hairdressers have their separate entity in Adho Khel and are not in the protection of someone and that he along with other brothers and sisters is the owner of the suit property including the suit house while the contesting defendants badly failed to prove the fact that the land for the suit house was given by their predecessor to the predecessor of the plaintiff for temporary residence. Therefore, both these are decided accordingly.

Issues No. 01 & 04:

Both these issues are inter-linked, hence, taken together for discussion.

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As sequel to my above findings, on issue no. 02 & 03, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Therefore, both these issues are decided in positive.

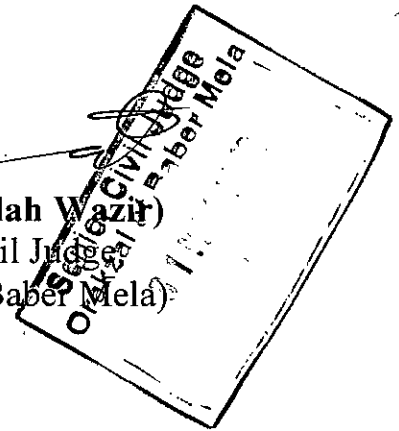
Relief

As sequel to my above issue-wise findings, suit of the plaintiff is hereby decreed as prayed for. Costs shall follow the event.

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


Announced
31.05.2022


(Rehmat Ullah Wazir)
Senior Civil Judge
Orakzai (at Baber Mela)



CERTIFICATE

Certified that this judgment of mine consists of 10 (Ten) pages, each has been checked, corrected where necessary and signed by me.


(Rehmat Ullah Wazir)
Senior Civil Judge,
Orakzai (at Baber Mela)

