



*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-8/13 of 2022**

**Date of institution: 26.03.2022**

**Date of decision: 05.07.2022**

Shehzad Gul son of Qambar Ali, Qaum Ali Khel, Tappa Panjam, Village Dapar, Tehsil Upper, District Orakzai.

..... (Appellant/defendant)

...Versus...

1. Mehnaz Gul son of Qambar Ali, Qaum Ali Khel, Tappa Panjam, Village Dapar, Tehsil Upper, District Orakzai.

..... (Respondent/plaintiff)


**Appeal against Judgement, Decree and Order dated 23.02.2022 in Civil Suit No. 11/1 (Neem) of 2020.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellant against the Judgment/Decree & Order dated 23.02.2022, passed by learned Civil Judge, Orakzai in Civil Suit bearing No. 11/1 (Neem) of 2020; whereby, the suit of the respondent/plaintiff with the title of Mehnaz Gul etc vs Shehzad Gul was decreed.

2. Brief facts of the case are such that the plaintiff Mehnaz Gul (respondent herein) has filed suit against the defendant (appellant herein) for declaration, injunction and recovery to the effect that the plaintiff being real brother of the defendant is equal owner of the dwelling house and adjacent property situated at village Dapar. The compensation amount of PKRs. 400,000/- granted under the CLCP Survey of the demolished houses has been received by the defendant by illegally excluding the plaintiff who was entitled for half of the compensation amount. The earlier dispute between the parties was resolved through the verdict of Local Jirga dated 15-07-2008; wherein,

the parties being real brothers have been declared half of the shareholders and

  
SAVED BY...  
Addl: District & Sessions Judge  
Orakzai at Hangu

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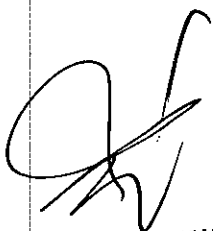
were bound down to honor the decision of the Jirga. As the decision of Jirga has been violated; therefore, an amount of PKRs. 200,000/- may further be granted as fine with total of PKRs. 400,000/- recovery prayer.

3. Defendant on appearance, raised so many legal and factual objections in his written statement. It was specifically pleaded that the dwelling house was constructed by defendant without the involvement of plaintiff and thus he was the only person entitled for receiving compensation amount.

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 learned Trial Judge.

- i. Whether plaintiff has got a cause of action?
- ii. Whether the plaintiff is estopped to sue?
- iii. Whether the suit of the plaintiff is time barred?
- iv. Whether the plaintiff is entitled to half of the suit property as per the Jirga decision dated 15-07-2008?
- v. Whether the plaintiff is entitled to half of the amount of Rs. 400,000/- received by the defendant No. 1 in the CLCP Survey of the suit house as per the Jirga decision dated 15-07-2008?
- vi. Whether plaintiff is entitled to the decree as prayed for?
- vii. Relief?

5. Opportunity of leading evidence was accorded to both the parties. Seizing the opportunity, plaintiff produced as much as three persons in evidence and thereafter closed it. On turn, defendant had also produced one person in support of his plea taken in defense. Learned counsel representing parties have been heard and suit was decreed which is impugned by the

  
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6. Muhammad Iftekhar Khan Advocate for appellant argued that suit was barred on different accounts like limitation, non-joinder, form of suit and estoppel. The evidence was deficient and grant of decree was result of non-reading and misreading of evidence. The impugned judgement is based on non-appreciation of evidence and wrong application of law. It was pressed that the deed relied upon by the plaintiff was written on simple/ordinary paper which has no evidentiary value as was settled in Shams Uddin vs Abid Hussain case reported as 2006 CLC-571 [Lahore]. He concluded that the Judgment in question may be set aside for being illegal and appeal in hand may be allowed.

7. Mr. Abid Ali Advocate representing respondent resisted the stance of opponent by stating that the appellant has indulged the plaintiffs in rounds of litigation and protracting it for no justifiable reason with mala fide to deprive the plaintiff from fruits of decree. He prayed for dismissal of appeal.


8. The parties have admitted some facts either in their pleadings or in evidence. Parties are admittedly brothers interse. The matter in issue as well as matters of other property has earlier been settled through administration of special oath. The dwelling house against which compensation has been granted is available in shape of remains and is not capable of living.

9. The apple of discord between the parties that had given birth to instant litigation, is that defendant/appellant had received the compensation amount of Rs. 400,000/- and had denied the equal share of plaintiff/respondent. The plaintiff is claiming equal share in compensation amount; whereas, defendant is claiming exclusive entitlement on the score of being sole raiser of construction. Whether plaintiff has no nexus with the compensation of the disputed property which has wrongly been granted decree is the prime point

  
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of determination in pending appeal. Besides, some legal questions like limitation and estoppel etc. are worth determination as well.

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 plaintiff is proved through direct oral evidence of independent witnesses examined as PW-01 and PW-02. They have categorically testified that the property in dispute is joint ownership of the parties on equal basis. Both the witnesses confirmed the fact that disputed property was subject presented before local Jirga constituted with the mutual consent of the parties at Syed Khalil Ziyarat. The amicable settlement of issue was failed and the Jirga has decided to resolve the issue through administration of special oath. The plaintiff was administered oath by Jirga; wherein, he clarified on oath that half of the share in the disputed property is owned by him and half of the share is of his brother, the defendant. PW-1 and PW-2 testified that they were members of the Jirga which has successfully resolved the matter with the consent of the parties. PW-3 is the statement of plaintiff who stated that he has taken special oath for having equal share in the property in dispute and all such proceedings have been reduced into writing by Jirga as Ex.PW-3/1, which was duly signed by the plaintiff and defendant. Thus, plaintiff has succeed to establish probability in his favour through oral evidence of direct source and documentary evidence. Defendant while recorded his statement as DW-1 had categorically admitted the administration of oath that further strengthen the case of plaintiff. On the other hand, defendant has relied on his sole statement recorded as DW-1, the cross examination of which is full of admissions. He has not denied the ownership of the plaintiff in the disputed property but just took the specific plea that it


  
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was defendant who constructed this dwelling house. He himself stated that there is no oral or documentary evidence of the raising construction by him. This discussion is sufficient to hold that the decree has rightly been passed with reasonable appreciation of evidence and proper application of law.

11. As far as legal question of limitation raised in Appeal is concerned, the matter in issue discussed under Issue No. 3 in the impugned Judgement of Civil Court is self-explanatory and well-reasoned. The question of limitation is out of question that has mechanically been inserted without justification. Similarly, question of non-joinder or misjoinder 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. More so, 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.

12. Learned counsel for appellant has time and again pressed that Deed Ex.PW-3/1 relied upon plaintiff has been written on a simple/ordinary paper and no scribe thereof has been produced. Therefore, the Deed has got no evidentiary value and cannot be taken into consideration. He referred case titled "Nazeer Ahmad vs Abdul Hameed etc." reported as 2001 YLR-2145 [Lahore], where adverse inference has been drawn against plaintiff for non-production of scribe and stamp vendor. To the comprehension of this Court, the Judgement of Hon'ble the Lahore High Court, Lahore is not applicable to the circumstances of the present case. In the referred case, it was suit for specific performance of agreement to sell; whereas, in present case, it is the

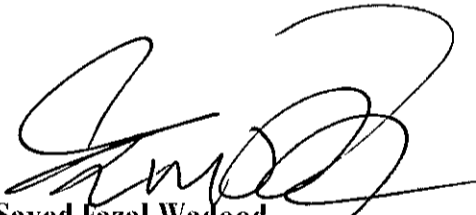
  
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suit for declaration and recovery and document is the decision of Jirga not the agreement to sell. Deed Ex.PW-3/1 is the verdict of Jirga and members of the Jirga have been produced in the Court to authenticate its contents as PW-1 and PW-2. Similarly, the Jirga has decided administration of special oath which has been complied by the parties and this fact is admitted by defendant as well in the cross examination recorded as DW-1. Besides, the deed was exhibited in the evidence without any objection during trial.

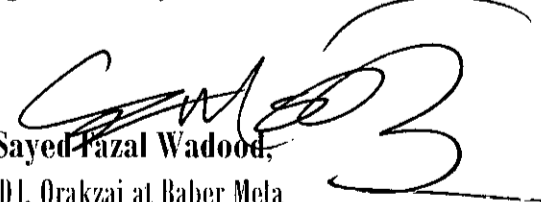
13. For what has been above, it can safely be concluded that the learned Trial Court has properly appreciated the evidence and rightly passed the impugned Judgement and Decree dated 23.02.2022. Consequently, as the Judgement under appeal does not warrant interference; therefore, the appeal in hand stands dismissed. Costs shall follow the events. Requisitioned record be returned back with copy of this Judgement; whereas, file of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

14. Announced in the open Court  
05.07.2022

  
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