

76/1/2022

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

Civil Suit No. 76/1 of 2022
Date of Original Institution: 26.09.2019
Date of Transfer In: 19.07.2022
Date of Decision: 30.11.2022

1. Sameer Khan s/o Khyal Muhammad,
R/O Qoum Ali Khel, Tappa Sher Khel, Talay, Tehsil Upper, District
Orakzai

(Plaintiffs)

VERSUS

1. Zaman Khan s/o Janat Khan and 02 others,
R/O Qoum Ali Khel, Tappa Sher Khel, Talay, Tehsil Upper, District
Orakzai

(Defendants)

SUIT FOR RECOVERY

JUDGEMENT:

The Plaintiff has brought the instant suit for recovery against the defendants, seeking therein that the parties are the residents of Qoum Ali Khel, Tappa Sher Khel, Talay. That the plaintiff is the owner in possession of Cheerh trees, and the defendants have got nothing to do with the same. That on 25.06.2019, the defendants entered the land of the plaintiff and cut down 300 Cheerh trees and took away the same and sold out the same. That the plaintiff interfered but could not stop them as they were armed with deadly weapons. That each of the Cheerh tree had the price of Rs.

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4000/- which the defendants cut, took and sold out. That the defendants were asked time and again to pay the price of the said Cheerh trees but they refused, hence, the present suit.

Defendants were summoned through the process of the court, who appeared and contested the suit by filing their written statement, wherein, they raised various legal and factual objections.

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

Issues:


1. Whether the plaintiff has got a cause of action?
2. Whether the plaintiff of the plaintiff is wrong and baseless?
3. Whether the suit of the plaintiff is time barred?
4. Whether the plaintiff is entitled to the recovery of an amount of Rs. 12,00,000/- as the price of 300 Cheerh trees cut down by the defendants.

5. Whether the plaintiff is entitled to the decree as prayed for?

6. Meta Relief.

Parties were given ample opportunity to produce their evidence, which they accordingly availed.

The plaintiff produced witnesses, in whom the plaintiff himself appeared as PW-01, who narrated the same story as in his plaint but admitted in his cross examination that he has not mentioned the boundaries of his property in



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the plaintiff and that he has not given the total number of his trees and that he has not annexed the pictures of the alleged cut trees and that he has not mentioned the name of the person who informed him of the cutting of trees. That 02 persons of the family of the defendants were killed in militancy for which I was blamed. That the area of Wacha Kadda, is an extended area having many shareholders. Further Mr. Akbar Jan, the brother of the plaintiff, appeared as PW-02 and fully supported the claim of the plaintiff but admitted in his cross-examination that in Orakzai, the mountains are jointly owned by the people. That he is residing in Karachi and has not gone to Tirah for the last 10/12 years. The Wacha Kadda is a joint area. Further, Mr. Muhammad Khaliq appeared as PW-03, who also supported the stance of the plaintiff by narrating the same story as in the plaintiff but admitted in his cross examination that most of the property in Tirah is joint. That he went to Tirah before 2019. Further, Mr. Badshah Wazir appeared as PW-04, who also supported the stance of the plaintiff by narrating the same story as in the plaintiff but admitted in his cross examination that most of the property in Tirah is joint and that the defendants have their own shares in the area of Wacha Kadda.


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In order to counter down the claim of the plaintiff, the defendants produced witnesses, in whom Mr. Muhammad Dilawar appeared as DW-01, who fully denied the claim of the plaintiff. The one Nia Zaman Khan appeared as DW-02 and who also fully denied the claim of the plaintiff. At the end, Aman Ullah appeared as DW-03, who also denied the claim of the plaintiff. All these witnesses have been cross examined but nothing tangible in favour of the plaintiff has been extracted out of them during cross examination.

Arguments heard and record perused.

My issue-wise findings are as under;

Issues No. 03:

The defendants in their written statement raised his objection that suit of the plaintiff is time barred but I am the opinion that allegedly the occurrence took place on 25.06.2019 and the instant suit has been filed on 26.09.2019,

the same is well within time. The issue is decided in negative.

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Issues No. 02 & 04

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

The plaintiff alleged in his plaint that the parties are the residents of Qoum Ali Khel, Tappa Sher Khel, Talay.

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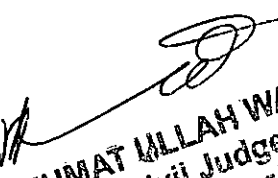
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That the plaintiff is the owner in possession of Cheerh trees and the defendants have got nothing to do with the same. That on 25.06.2019, the defendants entered the land of the plaintiff and cut down 300 Cheerh trees and took away the same and sold out the same. That the plaintiff interfered but could not stop them as they were armed with deadly weapons. That each of the Cheerh tree had the price of Rs. 4000/- which the defendants cut, took and sold out. That the defendants were asked time and again to pay the price of the said Cheerh trees but they refused, hence, the present suit.

The plaintiff produced witnesses, in whom the plaintiff himself appeared as PW-01, who narrated the same story as in his plaint but admitted in his cross examination that he has not mentioned the boundaries of his property in the plaint and that he has not given the total number of his trees and that he has not annexed the pictures of the alleged

cut trees and that he has not mentioned the name of the person who informed him of the cutting of trees. That 02 persons of the family of the defendants were killed in militancy for which I was blamed. That the area of Wacha Kadda, is an extended area having many shareholders. Further Mr. Akbar Jan, the brother of the plaintiff, appeared as PW-02 and fully supported the claim of the plaintiff but admitted in his cross-examination that in Orakzai, the


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In order to counter down the claim of the plaintiff, the defendants produced witnesses, in whom Mr. Muhammad Dilawar appeared as DW-01, who fully denied the claim of the plaintiff. The one Nia Zaman Khan appeared as DW-02 and who also fully denied the claim of the plaintiff. At the end, Aman Ullah appeared as DW-03, who also denied the claim of the plaintiff. All these witnesses have been cross examined but nothing tangible in favour of the plaint has been extracted out of them during cross examination.

After hearing of arguments and perusal of the record, I am of the opinion that **Firstly**, the plaintiff failed to


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mention and establish the boundaries of the area owned by him and upon which the alleged trees have been cut down, **Secondly**, there is no eye-witness to the occurrence as per the statements of the PWs except the plaintiff himself, **Thirdly**, there is no measurement of the trees allegedly cut down from which the actual loss could be estimated, **Fourthly**, the evidence is deficient on the point whether the jungle from which the trees are cut down is jointly owned by the parties or not. Thus, in the light of the aforesaid observations, the issue No. 02 is decided in positive while the issue No. 04 is decided in negative.

Issues No. 01 & 05:

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

As sequel to my findings on issue no. 02 and 04, the plaintiff has got no cause of action and thus, he is not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

Relief

As sequel to my above issue-wise findings, suit of the plaintiff is hereby **dismissed with costs**.

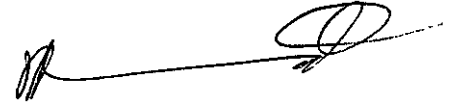

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File be consigned to the Record Room after its necessary completion and compilation.

Announced
30.11.2022



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

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)
Senior Civil Judge,
Orakzai (at Baber Mela)