

IN THE COURT OF SHABEER AHMAD
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 102/1 of 2020
Date of Original Institution: 27.08.2020
Date of Transfer in: 16.07.2022
Date of Decision: 17.11.2022

1. Gul Ajab Khan son of Noor Muhammad,
 2. Zaffar Khan son of Noor Muhammad,
 3. Shaukat Khan son of Khiali Khan,
 4. Wajid Khan son of Khiali Khan and
 5. Faiz Ullah son of Khiali Khan, all residents of Qaum Sheikhan, Tapa Umar Zai, village Lak Kanrry District Orakzai.
-(Plaintiffs)

VERSUS

1. Shereen son of Mahbal Hussain and
 2. Said Rehman son of Din Shah, both residents of Qaum Sheikhan, Tapa Umar Zai, village Lak Kanrry District Orakzai.
- (Defendants)

SUIT FOR DECLARATION -CUM- PERPETUAL AND MANDATORY INJUNCTION AND POSSESSION.

JUDGEMENT:

Parties present. Arguments already heard and record perused.

Through this judgment I am going to decide the suit in hand filed by the plaintiffs against the defendants.

1. Brief facts of the case in hand are that the plaintiffs have filed the instant suit for Declaration-cum- Perpetual Injunction and possession against defendants to the effect that being legal heirs of Noor Muhammad, they are lawful

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owners of (1) Field known as Tagha Patay (تاغہ پٹے), measuring 02 Kanal and (2) Field known as Soor Patay (سور پٹے) measuring 05 Kanal situated at Lak Kanrry (لاک کانرے), District Orakzai fully detailed in the headnote of the plaint. That defendants got no concern with suit property, therefore, defendants got no right to take advantage of non-presence of plaintiffs and take possession of the suit property, to interfere in the suit property or deny lawful ownership of plaintiffs. That, such acts of defendants are unlawful and plaintiffs be declared lawful owners in possession of suit property.

That defendants were asked time and again to admit legal claim of plaintiffs, but in vain, hence, the present suit.

2. With due process of law and procedure defendants were summoned, they appeared before the court and contested the suit by filing written statement and reply: They denied claim of the plaintiffs contending that defendant no. 1 has purchased the suit property through defendant no. 2 in the year 2003 and since then defendant no. 1 is owner in possession of the suit property. That after the alleged sale of the property, plaintiffs got no concern with the suit property.
3. From divergent pleadings of the parties, following issues were framed for adjudication of real controversy between the parties.

Issues:

- i. Whether the plaintiffs have got a cause of action?
- ii. Whether plaintiffs are estopped to file instant suit?
- iii. Whether the suit of the plaintiffs is time barred?
- iv. Whether the suit property is the ancestral property of the plaintiffs and defendants have got nothing to do with the same?
- v. Whether plaintiffs are entitled to the possession of the suit property?
- vi. Whether the suit property has been purchased by the defendants on 29.06.2003 and 10.07.2003 through cash payment of Rs. 72,000/- and 85,000/- respectively and have received the possession of the same from the plaintiffs and the defendants are owner in possession of the suit property since 2003?
- vii. Whether the plaintiffs are entitled to the decree as prayed for?
- viii. Relief.

- 4. Upon submission of list of witnesses, both the parties on being provided with opportunity to adduce their respective evidence, the parties produced their evidence.
- 5. After completion of evidence, arguments of the learned counsel for the parties were heard and record of the case file was gone through, with their valuable assistance.

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6. During course of recording evidence plaintiffs in support of their claim and contention produced three (03) witnesses.
7. Plaintiff no. 1 himself and as attorney for rest of plaintiffs deposed as PW-01. Power of attorney is Ex. PW-1/1. He stated that plaintiffs are legal heirs of Noor Muhammad and being the legal heirs of Noor Muhammad are owners of field called "Tagha Patay" and another field called "Soor Patay" situated at Lak Kanrry, District Orakzai. That about 02 years ago defendants forcefully and illegally took possession of the said fields. That possession of defendants is illegal and defendants are neither ready to resolve the matter through Sharia nor ready to resolve the matter through Jirga. That defendants are not ready to handover possession of the suit property. He lastly requested for decree of the suit as prayed for.
8. Asmeen Khan son of Payo Khan and Meer Ajab Khan son of Zarman Shah were deposed as PW-02 & PW-03 respectively. Both the witnesses reiterated the stance of the plaintiffs as in the plaint.

Thereafter, plaintiffs closed their evidence.

9. Syed Rehman son of Muhammad Deen Shah, defendant no. 2 deposed as DW-01. He stated that he has purchased the field called "Soor Patay" for his uncle Shereen from Gul Ajab Khan and Zafar Khan both sons of Noor Muhammad in lieu of a consideration of Rs. 72,000/- in the presence of

witnesses on 29.06.2003 and to that extent an audio cassette was recorded which is Ex. DW-1/1. That after sometime Zafar Khan, Shaukat Khan and others again offered the sale of another field called "Tagha Patay". That he again consulted his uncle Shereen Khan for purchase and on 10.07.2003 in presence of witnesses he purchased the said field in lieu of a consideration of Rs. 85,000/-. To this extent an audio cassette was also recorded which is Ex. DW-1/2. Copy of CNIC of the DW-01 is Ex. DW-1/3.

10. Counsel for the plaintiffs objected DW-1/1 & DW-1/2 on the grounds that audio cassette is not an admissible piece of evidence and the cassettes are prepared after the institution of the suit and that no FSL of audio cassettes has been done and that through modern technology voice of any person can be copied through voice changer.

11. It is pertinent to mention here that the said audio cassettes were played in the court room and DW-01 who has recorded the said audio cassettes identified all the voices who recorded their voices. He also identified those who have recorded their voices and have passed away and the one who are alive. Therefore, the objection has no value.

12. Shereen Khan son of Muhib Ul Hussain, defendant no. 1, deposed as DW-02. He recorded his statement to the effect that his nephew Said Rehman has purchased the suit property

for him. That after purchasing the property in 2003, he is cultivating the same.

- 13. Badshah Khan son of Sar Khan, Khan Muhammad Khan son of Jan Akbar, Gulab Khan son of Muhib Ul Hussain, appeared and recorded their statements as DW-03, DW-04 & DW-05 respectively. They fully supported the claim of the defendants.

Thereafter, evidence of defendants was closed.

- 14. After completion of evidence of the parties, arguments of learned counsel for the parties were heard and record of the case file gone through with their valuable assistance.
- 15. My issue wise discussion is as under.

Issue No. 2:

Whether plaintiffs are estopped to file instant suit?

- 16. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on part of defendants, therefore, the issue is decided in negative and against the defendants.

Issue No. 3:

Whether suit of the plaintiffs is time barred?

- 17. Contention of defendants is that suit of plaintiffs is not within time for the reason that the alleged sale was executed in the year 2003 and the suit in hand was instituted 2020. Plaintiffs have sought declaration and permanent injunction. As per averments of plaint, cause of action

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accrued to the plaintiffs 02 years prior to the institution of suit when defendants refused to admit legal claim of the plaintiffs and to stop illegal interference in the suit property. Period for limitation for filing declaratory suit is six years. After 25th Constitutional (Amendment) Act, 2018, all Federal and provincial extended to the newly merged districts. Suit of plaintiffs is held to be within time, hence, issue decided in negative.

Issue No. 4, 5 & 6:

iv. Whether the suit property is the ancestral property of the plaintiffs and defendants have nothing to do with the same?

v. Whether the plaintiffs are entitled the possession of the suit property?

vi. Whether the suit property has been purchased by the defendants on 29.06.2003 and 10.07.2003 through cash payment of Rs. 72,000/- and 85,000/- respectively and have received the possession of the same from the plaintiffs and the defendants are owner in possession of the suit property since 2003?

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These issues are interlinked, therefore, are taken jointly for discussion.

18. Claim of the plaintiffs is that being legal heirs of Noor Muhammad they are owners of the suit property and are entitled to the possession of the suit property.

19. Coming to the statements of PWs, plaintiff no. 1 himself and as attorney for rest of the plaintiffs deposed as PW-01. He asserted that the suit property is their ancestral property and that about 02 years ago, defendants have forcefully and illegally took possession of the suit property.

20. In the plaint, it is mentioned that the plaintiffs left the area during Army Operation. Army Operation was conducted in FATA in 2007-08, but in cross examination PW-01 stated that he has no knowledge when they migrated to Kohat. He also stated that Meer Ajab Khan look after their property, and that property has been cultivated by Sameen Khan.

میری جائیداد کی دیکھ بھال میرے عجیب کر رہا ہے۔ ہم کوہاٹ کب منتقل ہوئے ہیں مجھے کوئی میعاد کا اندازہ ہے اور نہ ہی مجھے علم ہے کہ ہم کب کوہاٹ منتقل ہوئے۔ جب ہم پہلی بار کوہاٹ منتقل ہوئے تو ہماری اراضی شمین خان نے کاشت کی تھی۔

He also has stated that defendants started interference in his property in 2019 but in next line says that he has given the property on Ijara in 2020. Further stated that he does not know who was cultivating his land in the year 2018-19.

مدعا علیہم میرے کھیتوں میں سال 2019 میں آئے۔ میرے عجیب خان کو میں نے اراضی اجارہ پر 2020 میں دی۔ 2018-2019 میں میرا اراضی کس نے کاشت کی مجھے علم نہ ہے اور نہ ہی میں نے کوئی معاوضہ وصول کیا ہے۔

21. PW-02 Asmeen Khan son of Payo Khan has admitted in his cross examination that the plaintiffs left the area in the year 1999 or in 2000.

مدعیان 1999 یا 2000 میں مکمل خاندان کے ساتھ چلے گئے

He has further admitted that he has no knowledge whether plaintiffs have given their property to Meer Ajab and that he has no knowledge in whose possession of the suit property is.

مدعیان نے میر عجب خان کو کب اراضی دی ہے مجھے معلوم نہ ہے۔ مجھے یہ بھی معلوم نہ ہے کہ مدعیان نے میر عجب کو زمین دی بھی ہے کہ نہیں۔ مجھے علم نہ ہے کہ مدعی کے اراضی کس کے قبضے میں ہیں۔

22. Meer Ajab Khan son of Zarman Shah deposed as PW-03. In his cross examination he admitted the fact that plaintiffs left the area in 2001.

یہ بھی درست ہے کہ 2001 میں لگنے کے بعد مدعیان کو ہاٹ منتقل ہوئے کیونکہ مدعی نے ضمانت تھوڑی تھی۔

He also stated that he went to Dubai in 2001 and came back in 2014.

He also admitted the fact that from 2001 to 2018 he cannot disclose any name who cultivated the suit property.

2001 سے لیکر 2018 تک میں ایسے کسی شخص کو نہیں جانتا جس نے اراضی متدعوئیہ کاشت کی ہو اور مدعیان کو پیسے ادا کئے ہو۔

Needless to mention that PW-01 in his cross examination has stated that when they left the area, Meer Ajab Khan looked after their property.

23. While cross examining DWs it is suggested by plaintiffs that father of the defendant no. 1 was Malak of area and he dispossessed plaintiffs from the area (Orakzai) in 2001. Relevant paras from cross examination of DW-01 are under.

یہ درست ہے کہ شیرین کا والد قوم شیخان کا ملک تھا۔ یہ غلط ہے کہ مدعا علیہم شیرین کے والد نے اراضی پر قبضہ کرنے کے لئے سن 2001 میں زبردستی مدعیان کو ہمراہ والد جائیداد پر ناجائز طور پر قبضہ جمانے کے لئے گاؤں لاک کانڑی سے گھر بدر کیا تھا یہ غلط ہے کہ اب حالات ٹھیک ہونے پر ہم مدعا علیہان مدعیان کو انکا حق جان بوجھ کر دینے سے انکاری ہے۔ یہ غلط ہے کہ میال حسین نے سال 2000-01 میں نور محمد کو مع اہل و عیال گاؤں لاک کانڑی سے در بدر کیا اور کڑی ایجنسی چھوڑنے پر مجبور

کیا۔

Nothing was brought on record neither any oral or documentary evidence was produced by plaintiffs to support this claim of plaintiffs. The plaintiffs have not reported their dispossession before any forum or Political Administration of Erstwhile FATA.

24. It is evident from statements of PWs and suggestions made during cross examination of DWs, that plaintiffs left the area in 2001 and not due to army operation as is averred in plaint.

25. On the other hand claim of defendants is that defendant no. 1 is lawful owner in possession of the suit property by purchase. The suit property was allegedly purchased by defendant no. 2 for defendant no. 1 from Gul Ajab Khan and Zaffar Khan (Plaintiff no. 1 & 2) both sons of Noor Muhammad. And as per local customs, defendant no. 2 has first asked from the people of locality about the said purchase.

26. Defendants in order to discharge their duty produced five DWs. The audio cassette which were recorded during the said purchase were exhibited during course of evidence.

27. Syed Rehman who deposed as DW-01 while supporting the claim of the defendants stated that the suit property was purchased by him for defendant no. 01. That "Soor Patay" was purchased on 29.06.2003 in lieu of consideration of Rs. 72,000/- and "Tagha Patay" was purchased on 10.07.2003 in presence of witnesses. That while purchasing both the fields audio cassettes were recorded which are Ex. DW-1/1 & Ex. DW-1/2. Copy of his CNIC is Ex. DW-1/3.

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28. Shereen Khan who deposed as DW-02, stated that he has purchased the suit property through his nephew in the year 2003 and since then he is owner in possession of the suit property.

29. Badshah Hussain who deposed as DW-03, supported claim of defendants. He stated that he was present when alleged transaction regarding "Soor Patay" took place, and that he is a witness to the whole transaction regarding "Soor Patay". That audio cassette was recorded in his presence. Copy of his CNIC is Ex. DW-3/1.

30. Similarly, Khan Muhammad Khan deposed as DW-04 and supported claim of defendants. He also stated that he is a witness to the transaction of "Soor Patay" and that audio cassette was recorded in his presence. Copy of his CNIC is Ex. DW-4/1.

31. Similarly, Gulab Khan deposed as DW-05 and supported claim of defendants. He stated that he is witness to the purchase of "Tagha Patay". That in the presence of Said Rehman, Munawar Khan, Haji Meer Rehman, Zaffar Khan (plaintiff no. 2), Shaukat Khan (plaintiff no.3) and Gul Ajab Khan (plaintiff no.1) the said field was purchased in lieu of a consideration of Rs. 85,000/- which was paid to the plaintiffs.

In spite of lengthy cross examination, nothing contradictory could be brought on record from DWs.

32. Since there is no land record in the newly merged districts, therefore, possession of the property is of paramount importance. Defendants

Shaukat Khan
Shaukat Khan
C/M/1/2022
Oral Evidence (Pleadings)

possession of the suit property has been admitted by plaintiffs in their cross examination. Relevant para of cross examination of PW-01 is:-

یہ درست ہے کہ پٹہ جات کا قبضہ برطابق دعویٰ مدعا علیہ کے پاس ہے۔
یہ درست ہے کہ میرے عدالتی بیان میں تحریر ہے کہ مدعا علیہ خان اراضی متدعوئیہ پر قابض ہے۔
یہ درست ہے کہ میرے عدالتی بیان میں تحریر ہے کہ مدعا علیہ خان نے اراضی متدعوئیہ پر قبضہ کیا ہوا ہے اور کسی صورت چھوڑ
نے کو تیار نہ ہے۔

33. At the time of arguments counsel for the plaintiffs raised the point that claim of defendants that they purchased the suit property from Gul Ajab and Zaffar Khan in 2003 is not right as in 2003 Noor Muhammad, father of Gul Ajab and Zaffar Khan was alive and he was the ostensible owner of the property and he has not sold the suit property. But as per local customs, any person from the family can do transaction if he was empowered by the family to act on their behalf. Further the said transaction took place in 2003 and predecessor of plaintiffs i.e Noor Muhammad passed away in 2008. He has not reported his dispossession as suggested by plaintiffs nor has challenged the alleged sale transaction before any forum during his life time.

34. Keeping in view the above discussion it is held that defendant no. 1 is lawful owner in possession of the suit property by purchase, resultantly issues no. 4 & 5 are decided in negative and against the plaintiffs while issue no. 6 is decided in positive and in favor of defendants.

Issues No. 1 & 7:

Whether plaintiffs have got a cause of action?


Whether plaintiffs are entitled to the decree as prayed for?

35. In the light of foregoing discussion, plaintiffs have failed to prove their stance through cogent, convincing and reliable oral and documentary evidence, therefore, they have got no cause of action and are not entitled to the decree in their favor against the defendants. Both the issues are decided in negative.

Relief

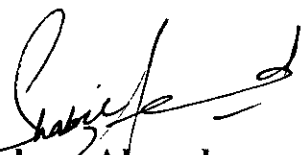
36. As sequel to my above issue-wise findings, suit of the plaintiffs is hereby **dismissed**. Costs shall follow the event.
37. File be consigned to the District Record Room, Orakzai after its completion and compilation.

Announced
17.11.2022


Shabeer Ahmad,
Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai

CERTIFICATE

Certified that this judgment of mine consists of **Thirteen (13)** pages, each has been checked, corrected where necessary and signed by me.


Shabeer Ahmad,
Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai