

IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
ORAKZAI (AT BABER MELA).

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Original Civil suit No	30/1
Date of Original institution	18.11.2020
Date of Transfer-in	07.07.2022
Date of decision	08.10.2022

1. Khwaidad khan S/o Jaffar Khan
2. Gulab Khan S/o Khayal Shah
3. Mena Jab Khan S/o Muhabbat Khan
4. Haji Khayal Shah S/o Mena Jab Khan
5. Haji Jaffar Khan S/o Mena Jab Khan
6. Muhabbat Khan S/o Mena Jab Khan

All residents of Qoam Mishti, Tappa Char Khel Qandi Nazar Khel, Aut Mela, Toor Kot, PO Ghiljo Upper Orakzai.

..... (Plaintiffs)

Versus

1. Ghazi Marjan S/o Rehmat Gul, R/o Ghondaki, Qoam Sheikhan
2. Khayal Man Shah S/o Peer Badshah, R/o Ghondaki, Qoam Sada Khel
3. Sharbat Khan S/o Naik R/o Ghondaki, Qoam Mala Khel PO Ghiljo Upper Orakzai.
4. Haji Menadar S/o Sher Haider
5. Fazal Akbar S/o Naseel Khan
6. Man Khan S/o Baitullah

All residents of Qoam Mishti Tappa Mamoza, Kandi Upper Orakzai.

.....(Defendants)

**SUIT FOR RECOVERY OF SUIT FOR DECLARATION &
PERMANENT INJUNCTION.**

JUDGMENT:

1. Brief facts of the case are that plaintiffs have filed the instant suit for declaration cum-permanent injunction to the effect that they are lawful owner in possession of landed property measuring 10 Jareeb fully detailed through boundaries in the head note of plaint.

Sami Ullah

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiff in support of his claim and contention produced 08 Witnesses. Detail of the plaintiff's witnesses and exhibits are documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Fazal Akbar S/o Akhel Zada Qaom Mishti Central District Orakzai	Nil
PW-2	Meena Dar S/o Sher Haider Qaom Mishti Lower District Orakzai	Iqrar Nama as Ex.PW-2/1
PW-3	Noorab Khan S/o Meer Alam Khan Qaom Ali Khel, Tehsil Upper District Orakzai	Jirga Deed as Ex.PW-3/1
PW-4	Malik Laiq Khan S/o Manaye Qaom Mishti Central District Orakzai	Nil
PW-5	Momen Shah S/o Gul Wazir Qaom Mishti Central District Orakzai	Nil
PW-6	Mujeeb Khan S/o Muhammad Khan Qaom Mishti Central District Orakzai	Nil
PW-7	Zaleeman Shah S/o Gul Maan Shah Qaom Rabia Khel Upper Orakzai	Copy of CNIC as Ex.PW-7/1
PW-8	Khwaidad khan S/o Jaffar Khan Qaom Mala Khel Upper Orakzai	Nil

Defendants in support of his claim and contention produced three

(3) witnesses. Detail of defendant's witnesses and exhibited documents are as under; ||

WITNESSES		EXHIBITIONS
DW-1	Muhammad Qasim S/o Shah Wali Khan Qoam Mala Khel Upper District Orakzai (Abandoned)	Power of Attorney as Ex. DW-1/1 and Copy of CNIC as Ex. DW-1/2
DW-2	Khayal Man Shah S/o Peer Badshah Qoam Sada Khel, District Orakzai	Copy of CNIC as Ex. DW- 2/1
DW-3	Gul Faraz S/o Sardaraz Qoam Mamozai, karhapi, Tehsil Upper District Orakzai	Copy of CNIC as Ex. PW-3/1

5. Plaintiffs in support of his claim and contention himself appeared and recorded his statement as PW-08. He stated that his father and uncles had purchased the suit property from predecessors of defendants No 4,5 and 6 in the year 1978. When defendants denied the legal right of plaintiffs in year 1982-83, the matter was referred to Jirga and all the Jirga members delivered their decisions in favor of plaintiffs by accepting the testimony of 10 persons that the suit property was ownership of the plaintiffs. Four among the 10 persons so testifying took sacred oath i.e., Qasam and testimony of six persons were taken without Qasam. That after almost 40 years, the defendants No.1 to 3 again refused to admit the claim of the plaintiffs and in the year 2020 again the matter was referred to Jirga in which elders of four casts (Qoam) were present and the Jirga members again delivered their decision in

*Qasam
village*

favor of plaintiffs. But defendants No.1 to 3 are reluctant to accept the Jirga decisions. Thereafter, plaintiffs closed their evidence.

6. Khyalman Shah, defendant No.2, himself deposed as DW-02. He denied the claim of plaintiff asserting that the suit property is the ancestral ownership of Qoam Malakheil, Sadakheil and Sheikhan and that the claim of the plaintiffs is wrong and illegal. He lastly requested for dismissal of the suit. After recording of statements of three defense witnesses, in which one witness i.e., DW-01 was abandoned later on, the defendants closed their evidence.

7. After completion of evidence of the parties, arguments of the learned counsel for the parties were heard and record of the case file was gone through.

8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

Court
order

ISSUE NO.2:

Whether the plaintiffs are the owners in possession of disputed property, which their predecessors purchased from predecessors of defendants No.4 to 6?

9. The Claim of plaintiffs is that they are lawful owner in possession of suit property by purchase. The suit property was allegedly purchased by predecessor of plaintiffs from defendants N0.4, 5 and 6 in the year 1978 through an oral agreement as per local customs of the erstwhile FATA. Burdon of proof regarding this

issue was on plaintiffs. Plaintiffs, in order to discharge this duty, produced eight PWs. The Jirga decisions of year 2020 and Iqrar Nama were exhibited during course of evidence.

10. Fazal Akbar, who deposed as PW-01 and is defendant No.05 in the instant suit, while supporting the claim of plaintiffs stated that the suit property was purchased by plaintiffs from our predecessors i.e., predecessors of defendants No.4, 5 and 6 in the year 1978 in lieu of rupees 45 thousand in his presence and since then the property is in possession and ownership of the plaintiffs. And the possession of the suit property was given to predecessors of plaintiffs by our predecessors. That after that a jirga was convened and the Jirga members decided the matter in the favor of the plaintiffs. And after repatriation of the IDPs to District Orakzai, the defendants No.1 to 3 again challenged the ownership of the plaintiffs and again a Jirga was convened, which again decided the matter in favor of the plaintiffs.
11. Minadar, who deposed as PW-02 supported the claim of plaintiff. He stated that he had given statement in favor of the plaintiffs in an 'Iqrar Nama' which is Exhibit PW 2/1. He supported the claim of the plaintiffs and no material contradiction has been brought before the court in his cross examination.
12. Norab khan, who deposed as PW-03, supported the claim of plaintiffs. He stated that he was one of the members the Jirga of 2020 in respect of the suit property and that since he is illiterate, he had given consent to another person to signed the decision of

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the jirga which was reduced into writing. The jirga decision is Exhibit PW 3/1.

- 13. PW-04 and PW-05 namely malik Liaq khan and Momin Shah, who were the Jirga members in Jirga convened in 2020, they also supported the claim and contention of plaintiffs. PW-04 testified that the jirga decision which is Exhibit PW 3/1, bear his signature.
- 14. PW-06 stated that he has attended the Jirga of 1982/83 along with his father and that the contentions of the plaintiffs are correct.
- 15. Plaintiffs produced Zaliman Shah as PW-07. He was one of the Jirga members which took place in 1882/83. He stated that he had taken oath of the four persons in favor of the plaintiffs regarding the dispute of the suit property and after four persons had taken sacred oath, I took up the Quran and had accepted the testimony of six other persons. There after the jirga gave its decision in favor of the plaintiffs.
- 16. Plaintiff No.2 appeared as PW-08 and reproduce the contents of the plaint and requested that the suit may be decreed in his favor.
- 17. In spite of lengthy cross-examination, no material contradictions could be brought on record from the PWs.
- 18. Keeping in view the above discussion, it is held that plaintiffs produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.02 is decided in favor of plaintiffs and against the defendants.

Case called

ISSUE NO. 3:

Whether defendants No.1 to 3 are owners in possession of

19. The onus of proving the issue was on defendants and defendants produced three witnesses initially in their favor but after the recording of examination in chief of the PW-01 namely Muhammad Qasim, the council for defendants abandoned the said witness.
20. Coming to the statements of DWs, defendant No.2 namely Khiyalman himself deposed as DW-02. He denied the claim of plaintiffs asserting that the suit property is his ancestral ownership and that it has never been sold out to plaintiffs. In cross-examination, DW-02 stated that the grandson of the Plaintiff No.1 is watchman on the disputed property and on one occasion he was shot with firearm weapon and he sustained injuries, the FIR was registered and my son and cousin was charged in the said FIR.
21. Defendants No1 to 3 produced another witness namely Gul Faraz who recorded his statement as DW-03 and he denied the claim of plaintiffs asserting that the suit property is the ancestral ownership of our three casts namely Malakheil, SadaKheil and Shekhian and that it has never been sold out to plaintiff.
22. It is pertinent to mention that the defendants have produced only two witnesses in support of his stance. Defendants' witnesses have admitted in their cross examination that at least 150 houses are there in Gundaki area but they had produced only one witness besides PW-02 who is defendant in the instant case and also appeared as a witness. Moreover, the claim of the defendants don't have any jirga decision on its backing nor they have any document

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of any sort. And possession of defendants have not been established by any fact in the instant suit.

23. Keeping in view the above discussion, it is held that defendants have failed to produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.03 is decided in negative and against the defendants.

ISSUE NO. 1 and 4:

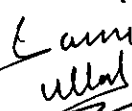
- 1. Whether plaintiffs have got cause of action?*
4. Whether plaintiffs are entitled to the decree as prayed for?

24. Both these issues are interlinked, therefore, taken together for simultaneous discussion.
25. Keeping in view my issue wise discussion, it is held that plaintiffs has got cause of action and are entitled to the decree as prayed for. Both these issues are decided in favor of plaintiffs and against the defendants.

RELIEF:

26. Crux of my issue wise discussion is that suit of the plaintiffs is hereby decreed in their favor against the defendants as prayed for. No order as to cost.
27. File be consigned to record room after its necessary completion and compilation.


Announced
08.10.2022


Sami Ullah
 Civil Judge/JM-I,
 Orakzai (At Baber Mela)

CERTIFICATE: -

Certified that this judgment consists of Nine (09) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

Dated: 08.10.2022


Sami Ullah
Civil Judge/JM-I,
Orakzai (At Baber Mela)