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

Civil Suit No. 47/1 of 2022
Date of Original Institution: 06.05.2020
Date of Transfer In: 27.06.2022
Date of Decision: 24.09.2022

*1. Khan Haider s/o Mir Haider, Injawar, Qoum Rabia Khel,
Tappa Piawo Khel, District Orakzai*
(Plaintiff)


VERSUS

*1. Muhammad Hayat s/o Majnoon Khan, R/O Chano Tang,
Qoum Rabia Khel, Tappa Behram Khel, District Orakzai.*
(Defendant)

**SUIT FOR SPECIFIC PERFORMANCE, RECOVERY,
PERPETUAL AND MANDATORY INJUNCTION AND
POSSESSION**

JUDGEMENT:

Plaintiff Khan Haider has brought the instant suit for specific performance, recovery, perpetual and mandatory injunction and possession in the alternate against defendant, seeking therein that there is an agreement, Dated: 30.01.2016 between the parties whereby the defendant agreed to pay Rs. 600/ton to the plaintiff. That after the beginning of mining since 2016, the defendant has only paid Rs. 200,000/- to the plaintiff and after that he has paid nothing to the plaintiff and even not ready for rendition of accounts. That the defendant was asked time and again to pay the outstanding amount or


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stop mining and hand over possession of the mountain to the plaintiff but he refused, hence, the present suit.

Defendant was summoned, who appeared before the court and contested the suit by filing written statement, wherein he raised some factual and legal 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 suit of the plaintiff is time barred?
3. Whether the plaintiff is estopped to sue?
4. Whether the plaintiff is entitled to the recovery of an amount of Rs. 600/ton of coal excavated from the suit property since 31.06.2016 till the pendency of the suit from the defendant as per the agreement deed, Dated: 31.08.2016?
5. Whether the plaintiff is entitled to the recovery of possession of the suit property in the alternate?
6. Whether the plaintiff is entitled to the decree as prayed for?

Relief.

Later on, the defendant failed to appear before the court, hence, he was placed and proceeded ex-parte.

Plaintiff was given an opportunity to produce ex-parte evidence, but he only himself appeared as PW-01 and closed his evidence.

Ex-parte arguments heard and record perused.

My issue-wise findings are as under;

Issues No. 02:

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REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela.

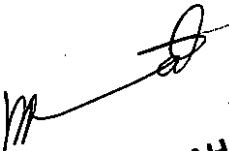
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The defendant in his written statement raised his objection that suit of the plaintiff is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 06.05.2020. Thus, the same is well within time. The issue is decided in negative.

Issues No. 03

The defendant alleged in his written statement that the plaintiff is estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 04 & 05:


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

The plaintiff alleged in his plaint that there is an agreement, Dated: 30.01.2016 between the parties whereby the defendant agreed to pay Rs. 600/ton to the plaintiff. That after the beginning of mining since 2016, the defendant has only paid Rs. 200,000/- to the plaintiff and after that he has paid nothing to the plaintiff and even not ready for rendition

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of accounts. That the defendant was asked time and again to pay the outstanding amount or stop mining and hand over possession of the mountain to the plaintiff but he refused, hence, the present suit.


The plaintiff only himself appeared as PW-01, and narrated the same story as in his plaint and produced the alleged agreement Dated: 31.08.2016 as annexure-A.

Ex-parte arguments heard and record perused.

After hearing of ex-parte arguments and perusal of the record, I am of the opinion that the plaintiff was bound to establish his case through cogent and reliable evidence even if the defendant is placed and proceeded ex-parte. But he only himself appeared as PW-01 in support of his claim and closed his evidence, wherein he only annexed the alleged agreement deed as annexure-A. Neither he bothered to produce the witnesses of the alleged deed nor the scribe of the deed and even he failed to produce the alleged deed in its original for perusal of the court. Thus, meaning thereby that he has no evidence in support of his claim, therefore, both these issues are decided in negative.

Issues No. 01 & 06:

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


FIAZAT ULLAH
Senior Civil Judge
Orakzai at Bahar Mela

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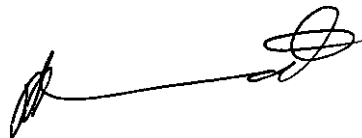
As sequel to my findings on issue no. 04 and 05, the plaintiff has got no cause of action and thus, he is not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

Relief

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

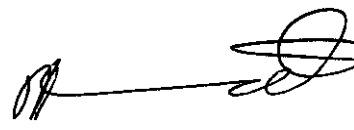
File be consigned to the Record Room after its necessary completion and compilation.

Announced
24.09.2022


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

CERTIFICATE

Certified that this judgment of mine consists of five (05) pages, each has been checked, corrected where necessary and signed by me.


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