

**IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI**

Case #	=	10/1 of 2020.
Date of Original Institution	=	25.02.2020.
Date of Present Institution	=	19.06.2021.
Date of Decision	=	22.12.2022.

1. Aziz Ur Rehman S/O Abdul Samad Khan and
2. Abdul Samad Khan S/O Abdullah both residents of Qaum Mishti, Tappa Darwi Khel, Tehsil Central, District Orakzai.

.....(Plaintiffs)

**Versus**

Habib Ur Rehman S/O Abdul Samad Khan, R/O Qaum Mishti, Tappa Darwi Khel, Tehsil Central, District Orakzai.

.....(Defendant)


**SUIT FOR DECLARATION CUM-PERMANENT INJUNCTION,  
RECOVERY OF AMOUNT RS. 230,000/- AND RS. 50,000/- AND  
POSSESSION THROUGH PARTITION AS ALTERNATE**

**JUDGEMENT**

22.12.2022

Through this judgement, I am going to decide the suit in hand filed by plaintiffs Aziz Ur Rehman and one other against the defendant Habib Ur Rehman for declaration-cum permanent injunction, recovery of amount of Rs. 230,000/- and Rs. 50,000/- and possession through partition as alternate.


Brief facts of the case in hand are that plaintiffs have filed the instant suit for declaration-cum permanent injunction, recovery of amount of Rs. 230,000/- and Rs. 50,000/- and possession through partition as alternate against the defendant to the effect that a Jirga was constituted to resolve the issue of movable and immovable properties

  
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(1).

between the parties and the Jirga gave its verdict dated 20.11.2011, whereby partition of the properties was affected between the parties. Similarly, another Jirga was convened which delivered its verdict on 06.04.2018 whereby the previous Jirga decision dated 20.11.2011 was maintained and parties were bound to obey the Jirga decisions as a result of which, matter of partition of properties between the parties was resolved. Parties are bound to obey the Jirga decisions but defendant is reluctant to obey the same and that he be restrained from interfering in possession of plaintiffs. That defendant was asked time and again to admit the Jirga decisions but in vain, hence, the present suit. Copies of the Jirga verdicts are annexed with the plaint.

- (2). With due process of law and procedure, defendant was summoned, who marked his attendance and contested the suit by filing written statement.

Defendant has raised several legal and factual objections in his written statement. Defendant has contended that suit of plaintiffs is time barred and is not maintainable in the eye of law and liable to be dismissed. It is also alleged that admittedly, Jirga delivered its verdict on 20.11.2011 to resolve the issues between the parties but due to some grievances, it was not accepted and on 16.07.2017, another Jirga was held which resolved all the outstanding issues between the parties but plaintiffs are reluctant to obey the decision of Jirga dated 16.07.2017.

  
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- (3). From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.


**ISSUES**

1. Whether plaintiffs have got cause of action? OPP
2. Whether plaintiffs are estopped to sue? OPD
3. Whether the suit of the plaintiffs is time barred? OPD
4. Whether the plaintiffs are the owners of the suit property through Jirga decision dated: 20.11.2011 and 06.04.2018?  
OPP
5. Whether the plaintiffs are entitled to the recovery of amount of Rs. 230,000/- and Rs. 50,000/- from the defendant? OPP
6. Whether plaintiffs are bound to obey the Jirga decision dated: 16.07.2017? OPD
7. Whether plaintiffs are entitled to decree as prayed for? OPP
8. Relief?

- (4). Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, the parties produced their respective evidence.

- (5). During course of recording evidence, plaintiffs in support of their claim and contention produced 06 witnesses.

- (6). Plaintiff No. 1 himself appeared and deposed as PW-01. Copy of his CNIC is Ex. PW-1/1. He reiterated the averments of plaint.

  
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Copy of Jirga decision dated 06.04.2018 is Ex. PW-1/2. He lastly requested for decree of suit against the defendant as prayed for.

Counsel for plaintiffs filed application for re-examination of PW-01 which was allowed and on 26.11.2022, PW-01 was re-examined. He produced the original Jirga decision dated 20.11.2011. Copy of the same was exhibited as Ex. PW-1/3.

- (7). Plaintiff No. 2, who is father of plaintiff No. 1 and defendant, was examined as PW-02. He also reiterated the averments of plaint. Copy of his CNIC is Ex. PW-2/1.
- (8). Pir Badshah and Khyal Akbar, Jirga members appeared and deposed as PW-03 and PW-04 respectively. They fully supported plea of plaintiffs. Copy of CNIC of PW-03 is Ex. PW-3/1.
- (9). Laiq Khan, guarantor of plaintiffs in Jirga proceedings, was examined as PW-05. He verified his signature on the Jirga decision dated 06.04.2018.
- (10). Syed Taimoor Syed (Record Keeper, Office of the Assistant Commissioner, Lower Orakzai), was examined as PW-06. He produced the relevant record. Original Jirga decisions are part of the said record. Copy of Jirga decision dated 10.03.2018 was exhibited as Ex. PW-6/1. Copy of his service card and his CNIC are Ex. PW-6/2 & Ex. PW-6/3 respectively. Original Jirga decision dated 06.04.2018 is also placed on the said file.

Thereafter, evidence of plaintiffs was closed.

- (11). On the other hand, defendant in support of his claim and contention produced three witnesses.

  
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(12). Mast Ali Shah and Piyao Khel were examined as DW-01 and DW-02 respectively. They are Jirga members who gave Jirga decision dated 16.07.2017. They supported the plea of defendant.

(13). Defendant himself appeared and deposed as DW-03. He denied the claim of plaintiffs asserting that through Jirga decision dated 16.07.2017, all the issues/disputes between the parties were resolved. He is in possession of his share. He lastly requested for dismissal of the suit of plaintiffs.

Thereafter, evidence of defendant was closed.

(14). After completion of evidence of the parties, arguments of the learned counsels for the parties were heard and record of the case file was gone through with their valuable assistance.


My issue wise findings are as under: -

**Issue No. 2. Whether plaintiffs are estopped to sue? OPD.**

(15). Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendant, therefore issue is decided in negative and against the defendant.

**Issue No. 3: Whether the suit of the plaintiffs is time barred?**

(16). Objection regarding limitation has been taken in the preliminary objections of the written statement. It is objected that suit of plaintiffs is time barred and liable to be dismissed. Per averments of plaintiff, cause of action accrued to the plaintiffs when defendant refused to obey the Jirga decisions and started interference in possession of plaintiffs. As per averments of written

  
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statement, last Jirga was held between the parties in the year 2017. Suit in hand was filed on 25.02.2020. Even otherwise, after the 25<sup>th</sup> Constitutional (Amendment) Act, 2018, all Federal and Provincial Laws stood extended to the newly merged districts. Period of limitation for filing declaratory suit under Article 120 of Limitation Act, is six years, therefore, suit of plaintiffs is held to be within time. Hence, issue is decided in negative.


**Issue No. 4: Whether the plaintiffs are the owners of the suit property through Jirga decision dated: 20.11.2011 and 06.04.2018? OPP**

**& Issue No. 5:**

**Whether the plaintiffs are entitled to the recovery of amount of Rs. 230,000/- and Rs. 50,000/- from the defendant? OPP**

Both these issues are interlinked, hence taken together for simultaneous discussion. Burdon of proof was on plaintiffs regarding both these issues.

- (17). Claim of plaintiffs is that all issues regarding movable and immovable properties were resolved between the parties through Jirga decisions dated 20.11.2011 and 06.04.2018. Copy of Jirga decision dated 20.11.2011 is Ex. PW-1/3 and copy of Jirga decision dated 06.04.2018 is Ex. PW-1/2 and copy of Jirga decision dated 10.03.2018 is Ex. PW-6/1. Plaintiffs have placed reliance on these Jirga decisions whereby partition of the properties was made between the parties. As per Jirga decision dated 06.04.2018, neither

  
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party will interfere in possession of each other and whoever violates the Jirga decision, will have to pay penalty of Rs. 50 lacs. As per Jirga decision dated 20.11.2011, Partition of the properties was affected between the parties in the following manner.

**1. Aziz Ur Rehman (Plaintiff No. 1) was given five fields detailed as below;**

- a. Shah Soor (field),
- b. Tari Kor Seera (field),
- c. Temar Patay (field),
- d. Konz Patay (field),
- e. Takharg Patay (field).


**2. Haji Abdul Samad Khan (Plaintiff No. 2) was given three fields detailed as below;**

- a. Stara Seera (field),
- b. Kata Mir Patay (field),
- c. Chota Bara (field).

**3. Habib Ur Rehman (Defendant) was given five fields detailed as below;**

- a. Piyao Ali Patay (field),
- b. Dosto Seera (field),
- c. Dorai Bagh Bagh (field) with trees,
- d. Warra Kandao (field),
- e. Takharg Patay (field).

**4. Per Ex. PW-1/3, one field (Nehar Wala Patay) was deducted from the share of father (plaintiff No. 2) and it was to be divided**

  
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between sons (Plaintiff No. 1 and defendant) equally while house hold articles and other joints goods were to be divided equally except cattle which were given to defendant.

5. Value of joint house was fixed as Rs. 7 lacs and it was decided that whoever opts to retain the joint house, will pay Rs. 350,000/- to the opposite party. Defendant opted to retain the joint house.

Per Ex. PW-1/3, each party was given its shares in the properties. Before the Jirga decision, statements of the parties were recorded. Their consent was obtained on Waak (a traditional mandate). Ex. PW-1/3, bears signatures of the parties and Jirga members. All the PWs fully supported the same. As a result of this jirga decision, fields/land was partitioned between the parties. Possession of their respective shares was delivered accordingly. Defendant in his written statement as well as in his cross examination, admitted that Jirga was held in the year 2011 and partition was made accordingly. Contents of the Jirga decisions are admitted by defendant.

- (18). Defendant, who deposed as DW-03 stated in his cross examination that partition was affected in the year 2011.

"یہ درست ہے کہ 2011 میں ہمارے مابین تقسیم ہوئی تھی۔ از خود کہا کہ آدھی زمین میں اور آدھی زمین

مدعیان خود کاشت کر رہے تھے۔"

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DW-03/defendant has also admitted that he opted to acquire the joint house by making payment of Rs. 350,000/-.



"یہ درست ہے کہ گھر کا مجھ پر تین لاکھ پچاس ہزار روپے رکھے تھے۔ جس کی میں نے مکمل ادائیگی کی ہے۔"

As per Ex. PW-6/1, whoever opts to acquire the joint residential house, will pay Rs. 350,000/- to the opposite party. Defendant opted the same. Plaintiffs have alleged that out of Rs. 350,000/-, Rs. 120,000/- has been paid while Rs. 230,000 is still outstanding. Defendant has alleged that he has paid the entire amount but failed to prove the same through any documentary or oral evidence.

- (19). Original Jirga decision dated 10.03.2018 is placed on file requisitioned from the office of Assistant Commissioner, Lower Orakzai. Counsel for defendant contended that application of plaintiff No. 1 was received by the office of AC, Lower Orakzai on 06.05.2019 while Jirga decision was given on 10.03.2018. That no notice to the parties is placed on file. No court decree is placed on file and that the Jirga decision is not signed by APA/AC, Lower Orakzai. These facts are also admitted by PW-06 in his cross examination. Original record is before the court which shows that application dated 06.05.2019 was filed by plaintiff No. 1 for implementation of the previous Jirga decisions including Jirga decision dated 10.03.2018. This file contains surety bonds, information report by Political Agent, Orakzai Agency to Assistant Political Agent, Lower Orakzai regarding injuries and death of wife of defendant. Per record, Jirgas were held between the parties in the year 2011 and 2018. Application filed in the year 2019 is for


  
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implementation of these Jirga decisions, hence objections are not sustainable.

(20). Parties are in possession of the fields/land as per Jirga decisions dated 20.11.2011, 06.04.2018 and 10.03.2018 except one field which was to be partitioned equally between plaintiff No. 1 and defendant but defendant has occupied the whole field/land. Plaintiffs established through oral and documentary evidence that they are entitled to half share/half field in light of the Jirga decisions.

(21). Plaintiff No. 2 is the father of plaintiff No. 1 and defendant. Plaintiff No. 1 and defendant are from separate mothers. Defendant is the son of ex-elder/first wife of plaintiff No. 2 while plaintiff No. 1 is son of his second wife. Plaintiff No. 2 decided to divide the properties between his sons as per prevailing customs and traditions of the Erst-while FATA. He wanted to avoid blood-shed between his sons over the properties. The dispute over the properties has already resulted into death of an innocent woman (wife of defendant). As per customs and traditions of the Erst-while FATA, tribal used to refer their disputes to the elders of the locality and disputes, whether civil or criminal would be resolved through Jirgas. In the present case, the dispute regarding properties between the parties was resolved through Jirga decisions. Jirga members resolved the issues between the parties accordingly. Jirga members fully supported claim and contention of plaintiffs.

  
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Keeping in view the above discussion, issue No. 4 and 5 are decided in favour of plaintiffs and against the defendant.

**Issue No. 6: Whether plaintiffs are bound to obey the Jirga decision dated: 16.07.2017? OPD**

- (22). Defendant has based his defence on Jirga decision dated 16.07.2017. Copy of the same is Ex. DW-3/1. As per Ex. DW-3/1, field/land near Nehar/canal was given to the defendant. The disputed house was equally partitioned between plaintiff No. 1 and defendant. DW-01 and DW-02 are the Jirga members who delivered Jirga decision dated 16.07.2017. DW-01, in his cross examination stated that Jirga decision dated 16.07.2017 does not bear signatures of plaintiffs, defendant and Mufti Khwaja Meen. It is also admitted that factum of partition between the brothers is not mentioned in the said Jirga. Similarly, DW-02, deposed that plaintiffs and defendant have not signed the said Jirga decision in his presence. Statements of the parties before the Jirga were not recorded. Similarly, defendant/DW-03, admitted that the said Jirga does not bear signatures of plaintiffs. Defendant failed to prove Ex. DW-3/1. Hence, Ex. DW-3/1 has no value and plaintiffs are not bound to abide by the said Jirga decision.

**Issue No. 1 & 7?**

- (23). In the light of foregoing discussion, it is held that plaintiffs have proved their stance through cogent, convincing and reliable documentary and oral evidence, therefore, they have got cause of action and are entitled to the decree in their favour against the defendant. Both these issues are decided in positive in favour of plaintiffs.

  
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**Relief?**

(24). Crux of my issue wise discussion is that suit of the plaintiffs is hereby decreed in their favour against the defendant. Plaintiffs are held entitled to;

**1. Plaintiff No. 1 is declared owner in possession of the fields/land mentioned in Ex. PW-1/3.**

- a. Shah Soor (field),
- b. Tari Kor Seera (field),
- c. Temar Patay (field),
- d. Konz Patay (field),
- e. Takharg Patay (field).

**2. Plaintiff No. 2 is declared owner in possession of the fields/land mentioned in Ex. PW-1/3.**


- a. Stara Seera (field),
- b. Kata Mir Patay (field),
- c. Chota Bara (field).

**3. Defendant is permanently restrained from interference in possession of plaintiffs.**

**4. Plaintiff No. 1 is held entitled to half share in the field/land situated near Nehar/canal called Nehar Wala patay and its possession.**

**5. Plaintiffs are held entitled to the recovery of Rs. 230,000/- (Remaining amount/value/price of joint suit house).**

**6. Plaintiffs are held entitled to the recovery of Rs. 50,000/- (For cutting the crop of plaintiffs).**


  
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As far as relief sought in respect of household articles, groceries, cattle etc is concerned, the same is denied as no details/description/specification is provided in the plaint and not proved.

(25). File be consigned to record room after the necessary completion and compilation.

**ANNOUNCED**  
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**CERTIFICATE**

It is certified that this judgment consists of 13 pages. Each page has been dictated, read, corrected and signed by me.



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