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

Civil Suit No. 52/1 of 2022
Date of Original Institution: 08.06.2020
Date of Transfer In: 30.06.2022
Date of Decision: 27.10.2022

1. Hayat Hussain s/o Amin Raza and 07 others,
R/O Qoum Ali Khel, Tappa Mirwas Khel, Debar, Tehsil Upper,
District Orakzai

(Plaintiffs)

VERSUS

1. Gulistan s/o Jan Gul and 01 other,
R/O Qoum Ali Khel, Tappa Mirwas Khel, Debar, Tehsil Upper,
District Orakzai

(Defendants)

**SUIT FOR DECLARATION-CUM-INJUNCTION AND
RECOVERY**

JUDGEMENT:

The Plaintiffs have brought the instant suit for declaration-cum-injunction and recovery against the defendants, seeking therein that the plaintiffs and the defendant No. 01 are the joint owners of the house and the landed property situated at Bakhar Debar, Qoum Ali Khel, Orakzai District, and the said property is to be divided to equal shares as both the parties are the owners in possession of the said property since their fore-fathers. That survey under CLCP regarding the suit house was conducted in the year 2018, and the survey amount was received by the defendant No. 01. That as per the law, the survey amount

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would be distributed amongst the owners. That the defendant no. 01 was asked to pay the share to the plaintiffs but he refused. That afterward an application Dated: 12.06.2019, was filed before the DC, Orakzai for the said payment. That afterwards, a Jirga was conducted on 30.12.2019, with the defendant No. 01, whereby it was decided that he would pay an amount of Rs. 80,000/- to the plaintiffs. That the defendant No. 01 was asked time and again to pay the said amount but he refused, hence, the present suit.

Defendant was summoned through the process of the court, in whom defendant No. 01 appeared before the court and contested the suit by filing written statement, wherein he raised some factual and legal objections while defendant No. 02 failed to appear before the court, hence, and proceeded ex-parte.

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

Issues:

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is time barred?
4. Whether the suit house is in the joint ownership and possession of the parties since long?

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5. Whether the defendant no. 01 have received an amount of Rs. 400,000/- under CLCP survey and the plaintiffs are entitled to receive their share in the said amount to the extent of Rs. 80,000/- as per the Jirga decision Dated: 30.12.2019 from the defendant no. 01?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief.

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

Arguments heard and record perused.

My issue-wise findings are as under;

Issues No. 02

The defendant no. 01 alleged in his written statement that the plaintiffs are estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

Issues No. 03:

The defendant no. 01 in his written statement raised his objection that suit of the plaintiffs 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

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25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 08.06.2020. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04 & 05:

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

The plaintiffs alleged in their plaint that the plaintiffs and the defendant No. 01 are the joint owners of the house and the landed property situated at Bakhar Depar, Qoum Ali Khel, entitled to equal shares as both the parties are the owners in possession of the said property since their fore-fathers. That survey under CLCP regarding the suit house was conducted in the year 2018, and the survey amount was received by the defendant No. 01. That as per the law, the survey amount would be distributed amongst the owners.

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That the defendant no. 01 was asked to pay the share to the plaintiffs but he refused. That afterward an application Dated: 12.06.2019, was filed before the DC, Orakzai for the said payment. That afterwards, a Jirga was conducted on 30.12.2019, with the defendant No. 01, whereby it was decided that he would pay an amount of Rs. 80,000/- to the plaintiffs. That the defendant No. 01 was asked time and

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again to pay the said amount but he refused, hence, the present suit.

The plaintiffs produced witnesses in whom the plaintiff no. 01 himself appeared as PW-01, who produced the Jirga decision Dated: 13.12.2019, which is Ex.PW-1/1 and further narrated the same story as in the plaint. But admitted in his cross-examination that he is residing in Kachai, Kohat for the last 20 years and that the defendant No. 01 is residing in a separate house after his marriage and we have separated from each other. Further admitted that he has not annexed any proof with the plaint regarding survey of the suit house. Further that he has not filed any application before the DC, Orakzai regarding genuineness of survey and no application is filed by his father regarding the same. Further that there is no written statement/waak of the parties available on file, that has been given to Jirga members.

Further Mr. Syed Shabbir Hussain, a Jirga member appeared as PW-02 who fully supported the stance of the plaintiffs by narrating the same story as in the plaint but admitted in his cross examination that no written waak/permission has been obtained for Jirga from the defendant No. 01. Further, that the Jirga members of the defendant No. 01 are not present before the court. Further, that he has not seen the suit house and that the plaintiff is residing here in Kohat from the last

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30/40 years and that he does not know that how much distance is there in the houses of the parties at Tirah. Further, Mr. Abdul Akbar, a Jirga member appeared as PW-03, who fully supported the stance of the plaintiffs by narrating the same story as in the plaint. But admitted in his cross examination that he has not seen the survey receipt received by the defendant No. 01. That the defendant No. 01 is married for the last 30/45 years. That no written waak/permission is obtained by us for the Jirga. That he cannot read the Jirga deed and the original deed is in the possession of the one Subid Ali but he has not appeared for evidence.

In order to counter down the claim of the plaintiffs, the defendant no. 01 produced only one witness as he himself appeared as DW-01, who fully denied the claim of the plaintiffs. Noting tangible has been extracted out of him during cross examination.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that it is established that the parties are residing in separate houses since long as admitted by PW-01 and corroborated by other PWs, meaning thereby that both the parties had their own houses in Orakzai and it is an established fact that the defendant No. 01 have received

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the survey amount regarding his own separate house and no joint house is somehow established by the plaintiffs through evidence. So far as the Jirga decision Dated: 13.12.2019 is concerned, the same is not proved to have taken place as neither any written waak/permission on the part of the defendant No. 01 is established nor it has been produced in original to rely upon. Thus, in the light of the aforesaid findings, both these issues are decided in negative.

Issues No. 01 & 06:

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

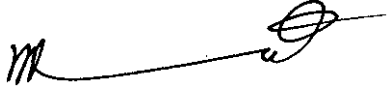
As sequel to my findings on issue no. 04 and 05, the plaintiffs have got no cause of action and thus, they are not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

Relief

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

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

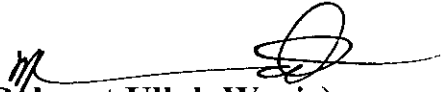
Announced
27.10.2022


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Senior Civil Judge,
Orakzai (at Baber Mela)

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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)