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

Civil Suit No. 22/1 of 2021  
Date of Institution: 09.03.2021  
Date of Decision: 28.11.2022

1. **Haji Salamat Shah and 03 others**  
R/O Qoum Ali Khel, Tappa Mirwas Khel, Spirkiyo Kalay,  
Tehsil Upper, District Orakzai  
(Plaintiffs)

**VERSUS**

**Deputy Commissioner Orakzai, HQ at Baber Mela, Hangu  
and 02 others** R/O Qoum Ali Khel, Tappa Mirwas Khel,  
Spirkiyo Kalay, Tehsil Upper, District Orakzai presently R/O  
Jabb Gabru, Sherkot, Kohat.  
(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL &  
MANDATORY INJUNCTION AND RECOVERY**

**JUDGEMENT:**

The Plaintiffs have brought the instant suit for declaration-cum-perpetual & mandatory injunction and recovery against the defendants, seeking therein that the plaintiff No. 01 is the paternal uncle of defendant No. 02, 03 and the plaintiff No. 02 while the plaintiff No. 02 and the defendant No. 02 are brothers inter-se and the descendants of one and the same predecessor and are the joint owners in possession of the suit houses and the landed property situated at Village Spirkiyo, Chappar, Upper Orakzai. That survey under CLCP regarding the suit houses was conducted by the defendant No. 01 in the year 2018/19, however, it was

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decided through Jirga according to the traditions, by the elders of the family and committee members that the survey's amount would be distributed amongst the owners according to their shares. That defendant No. 02 & 03 conducted survey of the said suit houses in presence of the plaintiffs and the plaintiff No. 01 is entitled to receive the 1/3 share of the survey's amount and plaintiff No. 02 is entitled to receive the half of the share of the survey's amount w.r.t the survey of the joint houses of the defendant no. 02 as the plaintiff No. 02 and defendant No. 02 are brothers inter-se. That the defendant No. 02 & 03, have got no right to receive the entire survey amount of the joint suit houses of the parties and to deprive the plaintiffs of their respective shares. That the defendants No. 2 & 03 were asked time and again to pay the share of the survey amount but they refused, hence, the present suit.

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Defendants were summoned through the process of the court, in whom the defendant No. 02 & 03 appeared before the court and contested the suit by filing their written statement, wherein they raised some factual and legal objections while defendant No. 01 failed to appear before the court, hence, placed 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 survey was conducted by the Government in respect of joint houses of parties situated at Spirki Kalay, Chappar Upper Orakzai, hence plaintiff are entitled to receive their respective share in the survey amount?
3. Whether parties are separately residing in their respective houses and the survey was conducted in respect of houses of defendants No. 02 & 03, hence, plaintiffs have got no concern with the survey amount?
4. Whether the plaintiffs are entitled to the decree as prayed for?
5. Relief.

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

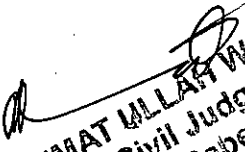
Arguments heard and record perused.

My issue-wise findings are as under;

**Issues No. 02 & 03:**

Both these issues are inter-linked, hence, taken together for discussion.

The plaintiffs alleged in their plaint that the plaintiff No. 01 is the paternal uncle of defendant No. 02, 03 and the plaintiff No. 02 while the plaintiff No. 02 and the defendant No. 02 are brothers inter-se and the descendants of one and the same predecessor and are the joint owners in

  
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possession of the suit houses and the landed property situated at Village Spirkio, Chappar, Upper Orakzai. That survey under CLCP regarding the suit houses was conducted by the defendant No. 01 in the year 2018/19, however, it was decided through Jirga according to the traditions, by the elders of the family and committee members that the survey's amount would be distributed amongst the owners according to their shares. That defendant No. 02 & 03 conducted survey of the said suit houses in presence of the plaintiffs and the plaintiff No. 01 is entitled to receive the 1/3 share of the survey's amount and plaintiff No. 02 is entitled to receive the half of the share of the survey's amount w.r.t the survey of the joint houses of the defendant no. 02 as the plaintiff No. 02 and defendant No. 02 are brothers inter-se. That the defendant No. 02 & 03, have got no right to receive the entire survey amount of the joint suit houses of the parties and to deprive the plaintiffs of their respective shares. That the defendants No. 2 & 03 were asked time and again to pay the share of the survey amount but they refused, hence, the present suit.

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Orakzai at Basir Abala

The plaintiffs produced witnesses in whom the plaintiff no. 01 himself appeared as PW-01, who narrated the same story as in the plaint but admitted in his cross examination that both the parties have migrated from Orakzai

since 30 years back and are residing in different places. Further, admitted that we have separated from one another since 20 years back and are residing separately. Further, that he himself submitted an application before the Tehsildar for survey but the plaintiff No. 02 has not submitted an application for survey. Further, that he has no proof regarding submission of the said application. That the cheques were issued in the names of the defendant No. 02 & 03 and they have cashed the same. That he submitted an application before DC, Orakzai regarding non-disbursement of the survey amount to the defendants No. 02 & 03 but he dismissed the same. That he has not submitted any proof regarding his share in the suit house. Further, Mr. Khyal

Shah appeared as PW-02 and narrated the same story as in the plaintiff but admitted in his cross examination that the plaintiffs submitted an application for survey but the survey was done in the names of the defendants No. 02 & 03. That the plaintiffs have not filed any appeal regarding survey amount. Further, Mr. Ali Anwar appeared as PW-03, who narrated the same story as in the plaintiff but admitted in his cross examination that he has shifted from Orakzai to Kohat for the last 50 years. Further, admitted that the plaintiffs along with co-villagers filed an appeal against the said earlier survey and upon which, the same was conducted for the

second time. That many jirgas for the resolution of the issue between the parties were conducted but the same could not be dissolved.

In order to counter down the claim of the plaintiffs, the defendant No. 02 & 03 produced witnesses, in whom the defendant No. 02 himself appeared as DW-01 and fully denied the claim of the plaintiffs. Further, Mr. tahir Ali appeared as DW-02 while Shado Khan appeared as DW-03, who both denied the claim of the plaintiffs by narrating the same story as in the written statement. All these witnesses were cross examined but noting tangible has been extracted out of them during cross examination.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that the parties are residing in separate houses since long and have separated from one another for the last 20 years as admitted by PW-01 and corroborated by other PWs then how their houses were existing jointly. Also, it is admitted that applications for re-conducting of the survey of the suit houses along with other damaged houses of the area were submitted before the concerned authorities, who accordingly conducted second survey and even then the plaintiffs' claim was dismissed.

REHMAT M. L. J. JUDGE  
Senior Civil Judge/JM,  
Orakzai at Baber Mela

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Thus, in the light of the aforesaid findings, both these issues are decided accordingly.

**Issues No. 01 & 04:**

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

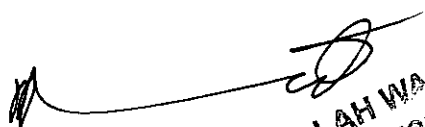
As sequel to my findings on issue no. 02 and 03, the plaintiffs have got no cause of action and thus, they are not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

**Relief**

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

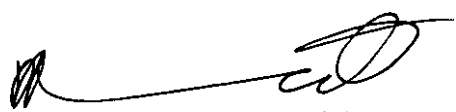
File be consigned to the Record Room after its necessary completion and compilation.

**Announced**  
28.11.2022

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

**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)  
REHMAT ULLAH WAZIR  
Senior Civil Judge/JM,  
Orakzai (at Baber Mela)