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

Civil Suit No. 40/1 of 2022
Date of Original Institution: 19.04.2021
Date of Transfer In: 23.06.2022
Date of Decision: 19.12.2022

1. Mst. Gul Khaperi w/o Eid Man Shah R/O Ghiljo, District Orakzai.

(Plaintiff)

VERSUS

1. Federal Government of Pakistan
2. Provincial Government, Khyber Pakhtunkhwa
Through DC, Orakzai
3. Deputy Commissioner, District Orakzai
4. Assistant Deputy Commissioner, District Orakzai
5. FDMA though Record Keeper, District Orakzai
6. Naib Tehsildar, Tehsil Ismail Zai, District Orakzai

(Defendants)

SUIT FOR RECOVERY

JUDGEMENT:

Plaintiff Mst. Gul Khaperi has brought the instant suit for recovery against the defendants, seeking therein that the plaintiff is the resident of Village Ghiljo, Tehsil Ismail Zai, District: Orakzai. That in the recent military operation, the house of the plaintiff along with the entire household articles, was fully destroyed. That plaintiff along with her whole family migrated to another area due to military operation and returned back to her area after 10 years. That Government of Pakistan promised to pay compensation to the IDPs. That according to the order of Government of Pakistan, survey under CLCP regarding the suit house was conducted

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and issued receipts/tokens and a CLCP form No. 96203, Dated: 30.05.2018 was issued to the plaintiff. That all of the entitled people were paid the amount through DC, Orakzai except the plaintiff and the same is yet to be paid. That the defendants were asked time and again to pay the said amount but they refused, hence, the present suit.

Defendants were summoned through the process of the court, in whom defendant No. 02, 03, 04 & 06 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 & 05 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 plaintiff has got a cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the plaintiff is entitled to the recovery of the amount of Rs. 400,000/- under CLCP vide registration form/token No. 96203, Dated: 30.05.2018 on account of damage to her house from the defendants?
4. Whether the suit house is not the ownership of the plaintiff rather the ownership of some third person?
5. Whether the plaintiff is entitled to the decree as prayed for?

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6. 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 contesting defendants alleged in their 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. 03 & 04:

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

The plaintiff alleged in her plaint that the plaintiff the resident of Village Ghiljo, Tehsil Ismail Zai, District: Orakzai. That in the recent military operation, the house of the plaintiff along with the entire household articles, was fully destroyed. That plaintiff along with her whole family migrated to another area due to military operation and returned back to her area after 10 years. That Government of Pakistan promised to pay compensation to the IDPs. That according to the order of Government of Pakistan, survey under CLCP regarding the suit house was conducted and issued receipts/tokens and a CLCP form No. 96203, Dated: 30.05.2018 was issued to the plaintiff. That all of the entitled

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people were paid the amount through DC, Orakzai except the plaintiff and the same is yet to be paid.

That the defendants were asked time and again to pay the said amount but they refused, hence, the present suit.

The plaintiff produced witnesses in whom the one Gul Zamin Shah, a brother-in-law of the plaintiff appeared as PW-01 and fully narrated the same story as in the plaint. Further, Mr. Imtiaz, a son and special attorney for the plaintiff 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 he has received the compensation for his damaged house and further that the one Gul Zaman is his paternal uncle.

In order to counter down the claim of the plaintiff, the contesting defendants produced only one witness as Mr. Khaista Akbar, the then Tehsildar Ismail Zai, Orakzai appeared as DW-01, who fully denied the claim of the plaintiff by alleging that the suit house was not the ownership of the plaintiff rather it was presented as such by the plaintiff at the time of survey but on verification it was confirmed that the same was actually the house of a terrorist namely Mr. Gul Zaman whom according to the policy of the government was not entitled to any compensation that is why the said survey form was cancelled by the committee and produced the copy of the cancelled form No. 96203 which is Ex.DW-1/1.

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Further that the compensation for the damaged house was received by the son of the plaintiff namely Imtiaz and the copy of the survey form No. 96202 in this respect is Ex.DW-1/2.

Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that it is established through evidence that the son of the plaintiff who is hardly now the 26 years of age, has already received compensation for his damaged house under survey form No. 96202. The said form has been issued on 30.05.2018. Admittedly, the plaintiff was displaced from her house 10 years before 2018, meaning thereby that her son would be hardly of 12 years at the time of her displacement, then how a 12 years son can have his own house which was damaged and he received compensation for the same. Further, the suit survey was for the physical verification and determination of the ownership of the damaged houses and award compensation to the beneficiaries under CLCP, which was clearly the mandate of the then committee comprised in the administration and security forces etc, and the committee have clearly cancelled the suit form No. 96203 on the ground that the house of the plaintiff has already been registered in the name of her son Mr. Imtiaz while the house in question was actually the ownership of the brother-in-law of the plaintiff namely Gul Zaman, who was

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declared as a terrorist and as per the policy of government of Khyber Pakhtunkhwa for CLCP notified vide Khyber Pakhtunkhwa Government Gazette, Extraordinary, 22nd May, 2019, no anti-state element would get registration as beneficiary of CLCP.

Thus, in the light of the aforesaid findings, the issue No. 03 is decided in negative while, the issue No. 04 is decided in positive.

Issues No. 01 & 05:

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

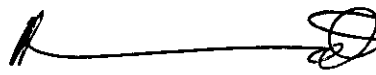
As sequel to my findings on issue no. 03 and 04, the plaintiff has got no cause of action and thus, she is not entitled to the decree as prayed for. Hence, both these issues are decided in negative.

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
19.12.2022


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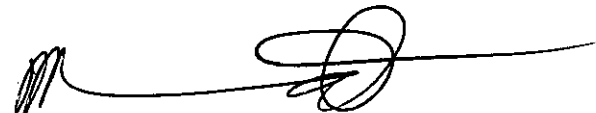
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CERTIFICATE

Certified that this judgment of mine consists of seven (07) pages, each has been checked, corrected where necessary and signed by me.


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