

IN THE COURT OF SHABEER AHMAD,
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 12/1 of 2020
Date of Institution: 20.11.2020
Date of Transfer In: 25.06.2022
Date of Decision: 20.12.2022

1. **Khial Shah,**
2. **Gul Shah,**
3. **Sarwar Shah,**
4. **Jamal Shah,**
5. **Khan Wazir**
6. **Nawab Shah, sons of Mehrab Shah**
7. **Aqal Shah,**
8. **Mst. Khial Ziba,**
9. **Mst. Shameen, daughters of Mehrab Shah**
10. **Sadeeq Ullah,**
11. **Anwar Sultan,**
12. **Suga Bibi, legal hires of Muzafar Shah**
13. **Roshan Baz,**
14. **Hashim,**
15. **Olas, sons of Taj Baz,**
16. **Mst. Zakia**
17. **Batool, daughters of Taj Baz all residents of Alwarra Mela,
Lower Orakzai.**

(Plaintiffs)

VERSUS

1. **Safar Gul,**
2. **Rehman Gul, both sons of Ali Hassan,**
3. **Saifor Rehman,**
4. **Arab Khan, both sons of Khial Wazir,**
5. **Qabil Khan son of Sada Gul,**
6. **Kar bad Shah son of Shah Hussain,**
7. **Amal Khan, all residents of Alwarra Mela, District Orakzai**

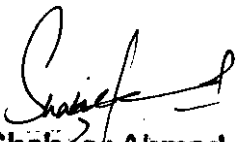
(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL AND
MANDATORY INJUNCTION AND POSSESSION**

JUDGEMENT:

20.12.2022

Brief facts of the case are that plaintiffs have brought the instant suit for declaration-cum-perpetual and


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mandatory injunction and possession against defendants, seeking therein that they are owners of the properties/fields alongwith a house, which defendants No. 1 to 6 are using as *Hujra*, fully detailed with boundaries in the headnote of the plaint. That defendants are possessing the property as tenants at will/farmers, giving half produce of the land to the plaintiffs. That plaintiffs are residing in Hangu but last year defendants No. 1 to 6 stopped giving produce of land and started claiming ownership over the properties. That defendant No. 2 unlawfully exchanged property of plaintiffs measuring 40 Marlas, detailed in para (j) of the plaint, with defendant No. 7 and by such like acts, defendants are trying to unlawfully deprive plaintiffs of their valuable rights and properties. That these acts of defendants are unlawful and ineffective upon the rights of the plaintiffs. That defendants were asked time and again to admit the legal claim of the plaintiffs but they refused, hence, the present suit.

Defendants were summoned, of whom defendants No. 1, 2, 4, 5 & 6 appeared before the court and contested the suit by filing their written statement, wherein they raised some factual and legal objections. Rest of the defendants did not appear despite proper service, therefore, they were placed and proceeded ex-parte.

Signature
 Snabeer Ahmad
 C12/112/2021-II
 Orakzai at (Kalaya)

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 plaintiff is time barred?
4. Whether suit property is the ancestral property of the plaintiffs and defendants have got nothing to do with the same?
5. Whether the defendants are illegally interfering in the suit property?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief.

After framing of issue both the parties were provided opportunity to produce evidence in support of their respective contention.

Plaintiffs in support of their contention produced witnesses as PW-01 to PW-03.

Sarwar Shah son of Mehrab Shah, plaintiff No. 3 and as attorney for rest of the plaintiffs, deposed as PW-01. He reiterated the same story as in the plaint.

Mena Gul son of Gulpar Hussain, deposed as PW-02. He stated that the suit property is the ancestral property of plaintiffs and defendants were farmers on the suit property and were giving produce of the land to the plaintiffs.


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Ilyas Khan son of Lal Bat Khan, deposed as PW-03. He also supported the claim of the plaintiffs and lastly requested for the decree of the suit in favor of the plaintiffs.

Thereafter, plaintiffs closed their evidence.

Defendants in support of their claim produced only one witness.

Haji Rehman Gul son of Ali Hassan, defendant No. 2 and as attorney for defendants No. 1, 4, 5 & 6, deposed as DW-01. Power of attorney is Ex. DW-1/1. He denied claim of the plaintiffs and stated that the suit property is their ancestral property. That they have also given some of the property to Hospital, for which they have received compensation. That because of this, two of his nephews namely Israfil Khan son of Arab Khan and Muhammad Abdullah son of Saifoor Khan were also given employment in the said Hospital. Service Cards of Israfil Khan and Muhammad Abdullah are Ex. DW-1/2 & Ex. DW-1/3.

Thereafter, defendants closed their evidence.

Learned counsel for the parties heard and record gone through. In the light of available record and arguments of counsel for the parties, my issue-wise discussion is as

under;

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Civil Judge/JM-II
Orakzai at (Kalaya) **Issue No. 02:**

Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore, issue is decided in negative and against the defendants.


Issue No. 03:

The defendants in their written statements raised their 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 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on 20.11.2020. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04 & 05:

Both the issues are interlinked and interconnected, hence, to avoid repetition of facts, both the issues are taken together for discussion.

Claim of the plaintiffs is that they are owner of the suit property while defendants are possessing the property as tenants at will/farmers and were giving half produce of



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land until last year, defendants stopped giving produce of land and started claim over the suit property. Plaintiffs further alleges that defendant No. 2 has unlawfully exchanged a 40 marlas land detailed in para (6) of the plaint, with defendant No. 7. That these acts of plaintiffs are unlawful and ineffective upon the rights of plaintiffs. Plaintiffs in support of their contention produced three witnesses. PW-01 in his examination in chief has stated that defendants are possessing the suit property as tenants at will/farmers and were giving shares in the produce of land but about two and a half years ago, defendants stopped giving produce of land and also have exchanged one of their field.

PW-01 in his cross examination has admitted the fact that in Orakzai, every fields have a specific name and that he has not disclosed any such name in his plaint. The relevant para is produced as under.

یہ درست ہے کہ ضلع اورکزئی میں ہر کھیت کا اپنا مخصوص نام ہوتا ہے۔ یہ درست ہے کہ میں نے اپنے دعویٰ میں کھیتوں کے نام کا ذکر نہیں کیا بلکہ صرف حدود اربعہ کا ذکر کیا ہے۔

He further has admitted the fact that some area of the suit property has been given to the hospital and that some people from defendants are also employed in the said hospital.


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یہ درست ہے کہ جائیداد متدعوئیہ کا کچھ رقبہ ہسپتال میں آگیا ہے۔ یہ درست ہے کہ ہسپتال میں مدعا علیہم کے کچھ ملازمت ہیں۔

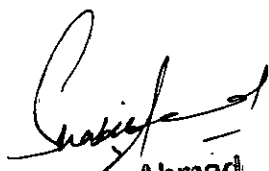
PW-02 has stated that in his examination in chief that the suit property belongs to plaintiffs and defendants are farmers on the suit property and were giving produce to the plaintiffs but in cross examination he has admitted that he has no knowledge, on how many fields plaintiffs have brought their suit.

مجھے یہ علم تو نہ ہے کہ مدعیان نے کتنے کھیتوں پر دعویٰ دائر کیا ہے

He also has admitted the fact that plaintiffs are his relatives.

On the other hand, claim of contesting defendants is that the suit property is their ancestral property and plaintiffs have got nothing to do with the same. DW-01 has stated in his examination in chief that they have also given some of the property to the hospital and for which they have received compensatory amount and two of his nephews have also got employment because of this. Mark-A are the documents which shows that they have received compensatory amount.

During cross examination of DW-01, it is suggested that defendants had enmity with one Khan Badshah and Khan Badshah's sister namely Lal Zaiba was wife of


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Khazeeb Shah and mother of Mehrab Shah (father of present plaintiffs). That because of this enmity, Khazeeb Shah and Mehrab Shah were asked by father of defendants to leave the area.

میں لعل زبیہ نامی کسی عورت کو نہیں جانتا۔ مجھے علم نہ ہے کہ لعل زبیہ خان بادشاہ کی بہن تھی۔ مجھے یہ بھی علم نہ ہے کہ لعل زبیہ خدیب شاہ کی بیوی اور مہراب شاہ کی والدہ تھی۔ یہ غلط ہے کہ ہماری مستورات کی وجہ سے خان بادشاہ نامی شخص کے ساتھ دشمنی ہے۔ یہ غلط ہے کہ مدعیان کے والد اور دادا نے ہمارے والد کے کہنے پر الوڑہ میلہ سے ہجرت کی تھی کیونکہ لعل زبیہ خان بادشاہ کی بہن تھی اور جس کے ساتھ ہماری دشمنی تھی۔

It is not appealing to prudent mind, that father and grandfather of plaintiffs were forced on migration by father of defendants and in return plaintiffs had given their land for cultivation to the defendants.

Similarly, it is also suggested during cross examination of DW-01 that the property given for hospital was in fact property of Mehrab Gul (father of plaintiffs).

یہ کہنا غلط ہے کہ اراضی کا جو حصہ جس کو میں اپنی ملکیت سمجھتا ہوں جو کہ ہسپتال میں شامل کی گئی ہے دراصل مہراب گل کی ہے۔

But plaintiffs have not provided any documents which could show that property belong to Mehrab Gul, rather the documents provided by DW-01 as Mark-A, shows that defendants had given the land for hospital and have received compensation for that.

Further, these documents show that Political Administration has given compensation for the said land in

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the year 2010-11, plaintiffs have not approached any forum in this regard that the property in fact belonged to the plaintiffs.

Moreover, plaintiffs have also not disclosed any-time, as when the suit property was given to the plaintiffs. Plaintiffs also alleges that for the last two and a half years defendants have not given them shares in the produce of the land, but have not sought any rendition of accounts.

It is also pertinent to mention here that plaintiffs allege in their plaint that defendants are their tenants at will/farmers and this has been categorically denied by defendants. Plaintiffs have not filed any re-joinder, which is also fatal to the suit of the plaintiffs.

In the light of the aforesaid discussion, it is held that plaintiffs badly failed to establish their claim regarding the ownership of the suit property through either oral or documentary evidence. Thus, in the light of the above findings, issues No. 04 & 05 are decided in negative and against the plaintiffs.

Issues No. 01 & 06:

Both these issues are interlinked, hence, taken

together for discussion.

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Orakzai Ct (Kalya)


As sequel to my findings on issues No. 04 & 05, 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 District Record Room after its necessary completion and compilation.

Announced
20.12.2022


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CERTIFICATE

Certified that this judgment consists of 10 pages, each has been checked, corrected where necessary and signed by me.


Shabeer Ahmad,
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Tehsil Courts, Kalaya, Orakzai