

76

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

Civil Suit No. 75/1(neem) of 2022  
Date of Original Institution 01.07.2020  
Date of Transfer In: 20.07.2022  
Date of Restoration: 20.07.2022  
Date of Decision: 28.10.2022

1. *Qadir Shah s/o Lal Man Shah*

*R/O Qoum DDM, Tappa Dray Plaray, District Orakzai*

*(Plaintiff)*

**VERSUS**

1. *Dost Muhammad s/o Zahir Shah and 02 others, all residents of Sabhi Ghari, District Orakzai*


*(Defendants)*

**SUIT FOR RECOVERY AND POSSESSION**

**JUDGEMENT:**

**28.10.2022**

Plaintiff Qadir Shah brought the instant suit for recovery and possession against the defendants to the effect that the predecessor of the defendants namely Zahir Shah vide Iqrar Nama dated: 21.04.2002 gave a land for construction of the house without any cost, whereby it was agreed that the plaintiff would not be dispossessed of the said land and in case the plaintiff by his own will vacates the house built upon the said land, it would be handed over to the aforementioned Zahir Shah and the plaintiff would be paid compensation for a construction. That afterwards, the plaintiff constructed a house upon the said land by spending an amount of Rs. 2,71,300/-. That after sometime the plaintiff

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

77

migrated from the area by vacating the said house due to militancy and became settled in district Hangu. That due to absence of the plaintiff, the predecessor of the defendants illegally occupied the said house and also took into possession the house hold articles lying in the said house worth Rs. 3,50,000/-. That after rehabilitation, the predecessor of the defendants received Rs. 400,000/- under CLCP and Rs. 70,000/- from an NGO over the said house despite the fact that it was the entitlement of the plaintiff. That the predecessor of the defendants died in the year 2019. That the defendants were asked time and again to hand over the possession of the suit house or its market value in the alternate and to pay the amount of Rs. 400,000/- received by them under CLCP and the amount of Rs. 70,000/- received by them from an NGO over the suit house but they refused, hence, the present suit.

  
**REHMAT ULLAH WAZIR**  
Senior Civil Judge (M),  
Orakzai at Baber Mera


Defendants were summoned through the process of the court, who appeared and contested the suit by filing written statement, wherein they raised certain factual and legal objections.

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

1. Whether the plaintiff has got a cause of action?
2. Whether the Plaintiff is estopped to sue?

78

3. Whether the suit of the plaintiff is time barred?
4. Whether the plaintiff has constructed a house for which the land was given free of cost by the one Zahir Shah, the predecessor of the defendants and in this respect an agreement deed Dated: 21.04.2002, was scribed between the plaintiff and by the predecessor of the defendants and they are bound to act upon the same?
5. Whether the plaintiff has spent an amount of Rs. 2,78,300/- upon the construction of the said house and thus he is entitled to the recovery of the same from the defendants?
6. Whether the defendants have taken possession of the house hold articles worth Rs. 3,50,000/- belonging to the plaintiff while taking illegal possession of the suit house and thus the plaintiff is entitled to the recovery of the aforesaid amount?
7. Whether the plaintiff is entitled to the recovery of Rs. 400,000/- received by the defendants w.r.t the house of the plaintiff in CLCP and Rs. 70,000/- received by the defendants from an NGO w.r.t the house of the plaintiff?
8. Whether the plaintiff is entitled to the decree as prayed for?

  
FEHMAT ULLAH WAZIR  
Senior Civil Judge/JM,  
Orakzai at Baber Mela

79


9. Relief.

Parties were given ample time and opportunity to produce their respective evidence.

The plaintiff produced witnesses in whom the one Wilayat Khan, appeared as PW-01, the one Surat Shah appeared as PW-02, the one Mujeeb-Ur-Rehman appeared as PW-03 and their examination in chief was recorded but they were not produced for cross examination, therefore, their statements have no legal value. Only the plaintiff himself appeared as PW-04, who produced the list of the house hold articles which is Ex.PW-4/1 and further narrated the same story as in his plaint.

In order to counter the claim of the plaintiff, the defendants produced witnesses in whom, the one Muhammad Raziq, the defendant No. 02 for himself and as a special attorney for the rest of the defendants appeared as DW-01, who fully denied the claim of the plaintiff. Further Mr. Aman Ullah Khan, a relative of both the parties appeared as DW-02, who fully narrated the same story as in the written statement. At the end Mr. Siyal Badshah appeared as DW-03, who also fully narrated the same story as in the written statement.

My issue wise findings are as under:

  
AMAN ULLAH KHAN  
SENIOR COUNSEL  
Orakzai at Baber Mela

80

**Issues No. 02**

The 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:**

The defendants in their written statement raised their objection that suit of the plaintiff 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 **01.07.2020**. Thus, the same is well within time.

The issue is decided in negative.

**Issues No. 04, 05, 06 & 07:**

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

The plaintiff alleged in his plaint that the predecessor of the defendants namely Zahir Shah vide Iqar Nama dated: 21.04.2002 gave a land for construction of the house without any cost, whereby it was agreed that the plaintiff would not be dispossessed of the said land and in


REHMAT M. I. AH WAZIR  
Senior Civil Judge/JM,  
Orakzai at Baber Mela

case the plaintiff by his own will vacates the house built upon the said land, it would be handed over to the aforementioned Zahir Shah and the plaintiff would be paid compensation for a construction. That afterwards, the plaintiff constructed a house upon the said land by spending an amount of Rs. 2,71,300/-. That after sometime the plaintiff migrated from the area by vacating the said house due to militancy and became settled in district Hangu. That due to absence of the plaintiff, the predecessor of the defendants illegally occupied the said house and also took into possession the house hold articles lying in the said house worth Rs. 3,50,000/-. That after rehabilitation, the predecessor of the defendants received Rs. 400,000/- under CLCP and Rs. 70,000/- from an NGO over the said house despite the fact that it was the entitlement of the plaintiff. That the predecessor of the defendants died in the year 2019. That the defendants were asked time and again to hand over the possession of the suit house or its market value in the alternate and to pay the amount of Rs. 400,000/- received by them under CLCP and the amount of Rs. 70,000/- received by them from an NGO over the suit house but they refused, hence, the present suit.

REHMAT MULLAH WAZIR  
Senior Civil Judge/JM,  
Orakzai at Baber Mela

The plaintiff in support of his claim produced 03 witnesses other than himself but he failed to produce the


same for cross examination, therefore, their statements as examination in chief cannot be legally relied upon unless cross examined. The plaintiff himself when appeared as PW-04, he produced the list of house hold articles, which is Ex.PW-4/1 and further fully narrated the same story as in his plaint but admitted in his cross examination that he belongs to a different caste. Further that the predecessor of the defendants namely Malik Zahir Shah gave me a land Fi-Sabeel-Le-Allah/without any cost in respect of which an agreement was scribed upon a plane paper, which was produced by PW-01 as Ex.PW-1/1 but I have not produced those witnesses for cross-examination. Further that he has no proof regarding the fact that the one Malik Zahir Shah have received Rs. 400,000/- under CLCP over the suit house and also he has no proof regarding the aforesaid Rs. 70,000/- which are allegedly received by the Malik Zahir Shah from an NGO over the suit house. Further that he has no written proof regarding the fact that the suit house was constructed by me. That after vacation of the area due to militancy, the suit house remained unoccupied for years and he left his house hold articles lying there at the suit house.

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

In order to counter the claim of the plaintiff, the defendants produced witnesses, in whom the one Muhammad Raziq, the defendant No. 02 for himself and as a special

attorney for the rest of the defendants appeared as DW-01, who fully denied the claim of the plaintiff rather asserted the fact that the plaintiff was given refuge by my father due to enmity of the plaintiff and he was actually a tenant at our house. Further Mr. Aman Ullah Khan and Mr. Siyal Badshah appeared as DW-02 and DW-03 respectively, who fully supported the stance of the defendants by narrating the same story as in the written statement. All these witnesses have been cross examined but nothing tangible have been extracted out of them during cross examination.

In view of the aforesaid findings, the plaintiff badly failed to establish *firstly*, the fact that the suit land was given to him by the father of the defendants Fi-Sabeel-Le-Allah/without cost as it is alleged as a type of gift but the same is without any natural love and affection and without any witness in whose presence, the same was gifted rather his admissions and circumstances clearly establish his status as a refugee customarily prevalent in the Erst-while FATA because of his enmity which is nothing more than a guest/tenant, *secondly*, that he spent the prayed money upon the construction of the suit house but no piece of evidence relevant to the fact has been produced, *thirdly*, that the predecessor of the defendants did receive an amount of Rs. 400,000/- under CLCP and Rs. 70,000/- from an NGO

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



because he failed to produce any relevant piece of evidence in this respect and *fourthly*, admittedly the suit house was vacated by him due to militancy for years and the alleged house hold articles were left by him lying there for the same period of time without any charge of the same given to the defendants and he also failed to produce any evidence in respect of these articles being taken by the defendants. Therefore, in view of the aforesaid findings, all these are decided in negative.

**Issues No. 01 & 08:**

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

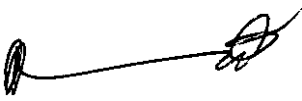
As sequel to my above findings, on issue no. 04, 05, 06 & 07, the plaintiff has got no cause of action and therefore not entitled to the decree as prayed for. Therefore, both these issues are decided in negative.

**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**  
28.10.2022

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

85

**CERTIFICATE**

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



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