

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

Civil Suit No. 42/1 of 2022
 Date of Original Institution: 21.05.2019
 Date of Transfer In: 23.06.2022
 Date of Decision: 29.11.2022

1. Karim Gul s/o Muhammad Wazir
*R/O Qoum Goda Rabia Khel, Tappa Ayaz Khel, Tehsil Ismail
 Zai, District Orakzai.*

(Plaintiff)

VERSUS

1. Provincial Government through Home Secretary
2. C&W District Orakzai through SDO, C&W.
3. Incharge Levi Section District Orakzai.
4. DPO Orakzai.
5. Contractor Mujahid C/O, C&W Office Orakzai

(Defendants)

**SUIT FOR DECLARATION-CUM-PERPETUAL &
 MANDATORY INJUNCTION, RECOVERY AND
 POSSESSION THROUGH DEMOLITION IN THE
 ALTERNATE**

JUDGEMENT:

Plaintiff Karim Gul has brought the instant suit for declaration-cum-perpetual & mandatory injunction, recovery and possession through demolition in the alternate, against the defendants, seeking therein that the plaintiff is the owner in possession of his share in the land situated at Wati Tarha, Goda Rabia Khel, Tehsil Ismail Zai, District Orakzai totally measuring about 1000 Acres including the suit land. That the plaintiff got a land in the family partition out of the aforesaid land, out of which approximately 30 Marlas have been taken into possession by the defendants and they are

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constructing a check-post over the same but without any proper acquisition & payment and without consent of the plaintiff. That the suit land have a market value of around Rs. 70,000/Marla. That the defendants have got no right to do so without proper acquisition/payment to the plaintiff. That the defendants be compelled to pay the market value of the suit land to the plaintiff or be restrained from doing the said construction and possession be recovered to the plaintiff through demolition in the alternate.

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

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 suit of the plaintiff is time barred?
4. Whether the suit property is the ownership of the plaintiff which is given to him as a result of family partition and the defendants have nothing to do with the suit property rather they have forcibly taken possession of the same and have built up a security picket without proper acquisition?
5. Whether the plaintiff is entitled to the recovery of the market value of the suit property?


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6. Whether the suit property is given to the government by the caste Rabia Khel as the same is a part of the Shamilat-e-Rabia Khel and not the sole ownership of the plaintiff, that is why the suit of the plaintiff is baseless?
7. Whether the plaintiff is entitled to the decree as prayed for?
8. Relief.

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

The plaintiff in support of his plaint produced witnesses in whom the Qudrat Ullah s/o Haji Muhammad Umar, R/O Akhunzada Bilyamina, appeared as PW-01, who produced the original register of decisions and stated that these are the decisions of his father and grandfather, available in written form in Persian language in the said register. The decision between the predecessors of the parties, Dated: 15.08.1967 is present in Persian language in the said register which correctly bears the signature of his grandfather namely Noor Habib and he endorsed his signature. The relevant decision is Ex.PW-1/2 which consists 02 pages in which one page is written in Persian Language while the other is translated in Urdu, by the one Mufti Muhib Ullah and his signature and Madrasa Affidavit are available. The decision also bears the signatures of Mehrab Gul, Noor Muhammad, Zameen Shah and Gul Zada wherein it is mentioned that the one Mehrab Gul was doing construction in the suit area which was estopped by the plaintiff belonging to


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Ayaz Khel and the construction was allowed on the condition that he will not further encroach upon the suit land and that the signatures of both the parties are available on the decision. Further, the one Khyber Gul s/o Gul Zada, appeared as PW-02, and stated that he is the son of the one Gul Zada, who was the jirga member of the afore-mentioned decision. That the same was made by his father along with Akhun Zadgan of Bilyamina and which has already been produced and that he heard of the said decision of his father and that since then, the suit property is in the possession of Ayaz Khel. That the decision correctly bears the thumb impression of his father. Further, Khyal Man Shah s/o Sultan Shah, a jirga member appeared as PW-03, who stated that in the year 2016, there was a dispute over the suit land between Ayaz Khel and Behram Khel, both belonging to Tribe Rabia Khel, where Ayaz Khel were planting trees in their area and Behram/Ibrahim Khel stopped them from planting trees and claimed the area as their ownership. The issue reached the office of the then APA, U/Orakzai and a jirga was conducted and he was a member of the said jirga. That on 11.08.2016, the jirga decided that the decision of Bilyamina Akhun Zadgan was quite correct and they also admitted that jirga as true and correct and the aforesaid jirga decision was handed over to the then APA, U/Orakzai in written form that the disputed mountain is the right of the plaintiff which is also

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clear from Panidal because the plaintiff is residing in the area of Panidal. That the jirga deed correctly bears his signature. The jirga deed is Ex.PW-3/2. Further, the one Noor Sherwan s/o Abdul Salim, a jirga member of the said jirga appeared as PW-04 and Nazeer Man Shah s/o Gul Man Shah also a jirga member of the said jirga, appeared as PW-05, who both fully supported the stance of the plaintiff by narrating the same story as narrated by the PW-03. Further, the plaintiff himself appeared as PW-06 and narrated the same story as in the plaint. All these witnesses have been cross examined but nothing tangible have been extracted out of them during cross examination.

In order to counter down the claim of the plaintiff, the defendants produced witnesses in whom, Mr. Bahadur Shah, Record Keeper, C&W, Orakzai, appeared as DW-01, who produced record w.r.t Musa Mela check-post, which is Ex.DW-1/1 and the copy of its tender, work order and release of amount, which are Ex.DW-1/2 to DW-1/4. But admitted in his cross examination that he has not brought any written proof regarding acquisition of the land for the said check-post. Further, the one Ishtiaq Hassan, SI legal, Orakzai Police, appeared DW-02 and stated that he is representative of the defendant No. 04 (DPO, Orakzai) and exhibited his authority letter as Ex.DW-2/1, who fully denied the claim of the plaintiff but admitted in his cross examination that we

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have no record regarding the acquisition of the suit land and that there is no written document scribed with anyone regarding the suit land. Further, Mr. Fazal Rahem, Naib Tehsildar, Ismail Zai, Orakzai, appeared as DW-03, who fully denied the claim of the plaintiff but admitted in his cross examination that the suit land has not been properly acquired and also no process in this regard has been effected and no written document has been scribed in this respect with the owners of the land.

Arguments heard and record perused.

My issue-wise findings are as under;

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 the 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

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operational from the aforesaid date while the instant suit has been filed on **21.05.2019**. Thus, the same is well within time. The issue is decided in negative.

Issues No. 04, 05 & 06:

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

The plaintiff alleged in his plaint that he is the owner in possession of his share in the land situated at Wati Tarha, Goda Rabia Khel, Tehsil Ismail Zai, District Orakzai totally measuring about 1000 Acres including the suit land. That the plaintiff got a land in the family partition out of the aforesaid land, out of which approximately 30 Marlas have been taken into possession by the defendants and they are constructing a check-post over the same but without any proper acquisition & payment and without consent of the plaintiff. That the suit land have a market value of around Rs. 70,000/Marla. That the defendants have got no right to do so without proper acquisition/payment to the plaintiff. That the defendants be compelled to pay the market value of the suit land to the plaintiff or be restrained from doing the said construction and possession be recovered to the plaintiff through demolition in the alternate.

The plaintiff in support of his contention produced witnesses, in whom the Qudrat Ullah s/o Haji Muhammad

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since then, the suit property is in the possession of Ayaz Khel. That the decision correctly bears the thumb impression of his father. Further, Khyal Man Shah s/o Sultan Shah, a jirga member appeared as PW-03, who stated that in the year 2016, there was a dispute over the suit land between Ayaz Khel and Behram Khel, both belonging to Tribe Rabia Khel, where Ayaz Khel were planting trees in their area and Behram/Ibrahim Khel stopped them from planting trees and claimed the area as their ownership. The issue reached the office of the then APA, U/Orakzai and a jirga was conducted and he was a member of the said jirga. That on 11.08.2016, the jirga decided that the decision of Bilyamina Akhun Zadgan was quite correct and they also admitted that jirga as true and correct and the aforesaid jirga decision was handed

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plaint. All these witnesses have been cross examined but nothing tangible have been extracted out of them during cross examination.

In order to counter down the claim of the plaintiff, the defendants produced witnesses in whom, Mr. Bahadur Shah, Record Keeper, C&W, Orakzai, appeared as DW-01, who produced record w.r.t Musa Mela check-post, which is Ex.DW-1/1 and the copy of its tender, work order and release of amount, which are Ex.DW-1/2 to DW-1/4. But admitted in his cross examination that he has not brought any written proof regarding acquisition of the land for the said check-post. Further, the one Ishtiaq Hassan, SI legal, Orakzai Police, appeared DW-02 and stated that he is representative of the defendant No. 04 (DPO, Orakzai) and exhibited his authority letter as Ex.DW-2/1, who fully denied the claim of the plaintiff but admitted in his cross examination that we have no record regarding the acquisition of the suit land and that there is no written document scribed with anyone regarding the suit land. Further, Mr. Fazal Rahem, Naib Tehsildar, Ismail Zai, Orakzai, appeared as DW-03, who fully denied the claim of the plaintiff but admitted in his cross examination that the suit land has not been properly acquired and also no process in this regard has been effected and no written document has been scribed in this respect with the owners of the land.

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In view of the aforesaid findings, the plaintiff established his exclusive ownership through oral and documentary evidence in the shape of a 30 years old document in his favor which is Ex.PW-1/2 and a recent Jirga Rai dated: 11.08.2016 which is Ex.PW-3/2 and the witnesses of the said documents, who endorsed the same. Further, admittedly the defendants have done construction over the suit land but without proper acquisition and payment, which is mandatory as per the relevant law but they have usurped upon the said land which is a private ownership and cannot be justified in any way. Thus, the issue No. 04 and 05 are decided in positive while the issue No. 06 is decided in negative.

Issues No. 01 & 07:

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

As sequel to my findings on issue No. 04 and 05, the plaintiff has got a cause of action and therefore, he is entitled to the decree as prayed for. Hence, both these issues are decided in positive.


Relief

As sequel to my above issue-wise findings, suit of the plaintiff is hereby **preliminary decreed** as prayed for with costs.

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

Announced
29.11.2022


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ERTIFICATE

Certified that this judgment of mine consists of 12 pages, each has been checked, corrected where necessary and signed by me.


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Orakzai (at Baber Mela)