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IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
ORAKZAI (AT BABER MELA).

Original Civil suit No.....28/1
Date of institution10.11.2020
Date of Transfer In06.07.2022
Date of decision14.12.2022

1. Haji Akbar Jan S/o Gul Hassan (Late)
2. Mst. Peer Jana W/O Akbar Jan
3. Sahib Jan S/O Akbar Jan
4. Samil Jan S/O Akbar Jan
5. Muhammad Shamil S/O Akbar Jan
6. Faraz Rehman S/O Akbar Jan
7. Sajid Ur Rehman S/O Akbar Jan
8. Mst. Bibi Amia D/O Akbar Jan
9. Mst. Bibi Ruqiya D/O Akbar Jan
10. Nawaz Rehman S/O Akbar Jan
11. Jihad Rehman S/O Akbar Jan
12. Hamid Rehman S/O Akbar Jan
13. Noor Rehman S/O Akbar Jan
14. Shams Rehman S/O Akbar Jan

All residents of Village Gouda, Qoam Rabia Khel, Tappa Afzal Khel,
District Orakzai.

..... (Plaintiffs)

Versus

1. Muzaffar Khan S/o Syed Nazeer
2. Lahore Khan Vs Syed Nazeer

Both residents of Village Gouda, Qoam Rabia Khel, Tappa Afzal Khel,
District Orakzai.

.....(Defendants)

Suit for Damages and Recovery

JUDGMENT:
14.12.2022

1. The leading facts of the case are that the plaintiffs are seeking recovery of Rupees 3 lacs from defendants for the reason that the plaintiffs have spent the said amount on behalf of defendants for

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the expenses over a dispute on joint hill and on Jirga negotiations. The plaintiffs also prayed for damages, for the losses occurred due to illegal construction of stairs on their room by the defendants and due to these stairs, the cattle used to walk over the roof of their room. Resultantly, the roof was damaged and plaintiffs spent 04 lacs rupees on repair of the same.

2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiffs were resisted on many legal as well as factual grounds. The defendants contended that no consent was given to the plaintiffs for making payment on their behalf and defendants also denied any payment being made by the plaintiffs ever. Moreover, during the pendency of the suit, the plaintiffs passed away and afterwards his legal heirs contested the suit further.
3. The divergent pleadings of the parties were reduced into the following issues.

ISSUES.

1. *Whether the plaintiffs have got cause of action?*
2. *Whether plaintiffs have spent Rs. 300,000/- (Three lacs) on the behest and behalf of defendants on various disputes related to hills?*
3. *Whether defendant No.01 has illegally constructed stairs on the room of plaintiffs situated at Gora Rabia Khel, which was being used by the cattle and caused damage of Rs. 400,000/- (four lacs) to the plaintiffs?*
4. *Whether plaintiffs are entitled to the decree as prayed for?*
5. *Relief.*

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4. Parties were afforded with ample opportunity to adduce evidence.

Detail of the plaintiff's witnesses and exhibited documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Sahib Jan S/o Akbar Jan Qoam Rabia Khel, District Orakzai Copy of CNIC is Ex.PW-1/2	Copy of CNIC is Ex.PW-1/1
PW-2	Umar Hayat S/o Gul Zada Khan Samana Sangar District Hangu	Copy of CNIC is Ex.PW-2/1
PW-3	Sahib Zada S/o Babri Khan residence Orakzai	Nil

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Detail of defendant's witnesses and exhibited documents are as under;

	WITNESSES	EXHIBITIONS
DW-1	Muzaffar Khan S/O Said Nazir Qoam Rabia Khel, Tappa Afzal Khel, District Orakzai	Power of Attorney is Ex. DW-1/1.

5. Arguments by learned Counsel for the parties heard.
6. Learned Counsel for the Plaintiffs, Mr. Noor Mir Jan Advocate, argued and stressed upon the facts averted in the plaint and submitted that the statements of PWs are consistent regarding the fact that the plaintiffs have spent 03 lacs rupees on behalf of defendants.
7. learned Counsel for the Defendants Mr. Sana Ullah Advocate, argued that there is no mention of any specific occasion where the plaintiffs spent the said amount, also there is no documentary

evidence by which it can be ascertained that any Jirga has taken place. The learned counsel also argued that the plaintiffs have not proved in evidence that the roof of the plaintiff's room has been damaged due to negligence of the defendants or otherwise. Hence, the evidence adduced by them is not confidence inspiring.

8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

ISSUE NO.2:

Whether plaintiffs have spent Rs. 300,000/- (Three lacs) on the behest and behalf of defendants on various disputes related to hills?

9. The onus to prove this issue was on the plaintiffs. The Claim of plaintiffs is that they have spent rupees 03 lacs on behalf of defendants on various occasion regarding dispute related to hill.

Plaintiffs, in order to discharge this duty, produced three witnesses who recorded their statements and therein reproduced averments asserted in plaint. However, there is no mention of time, place or occasions on which the plaintiffs paid the said amount. Moreover, there is no mention of the fact as to whom the said amount was paid. PW-01 in his cross examination has admitted the fact that he doesn't know as with whom there was dispute on the hills and there is no documentary evidence with him regarding the dispute or regarding any jirga convened for the said purpose. Pw-02 in his examination in chief recorded his statement that the payments of expenses were made on his hands and under his supervision

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regarding the dispute over the hill and admitted in his cross examination that the defendants had never given consent to him regarding payment of expense on their behalf to anyone.

10. Hence, in such situation where a fact averted in plaint has no documentary evidence on its back, no admission on behalf of defendants, no express consent on behalf of defendants and no complete and express statements of witnesses; the plaintiffs have failed to prove the said fact. Hence, the issue is decided in negative.

ISSUE NO.3:

Whether defendant No.01 has illegally constructed stairs on the room of plaintiffs situated at Gora Rabia Khel, which was being used by the cattle and caused damage of Rs. 400,000/- (four lacs) to the plaintiffs?

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11. The onus of proving the issue was on the plaintiffs. Plaintiffs are seeking damages of four lac rupees for the reason that the defendants have constructed stairs on the room belonging to plaintiffs and due to these stairs, the cattle used to walk over the roof of their room. Resultantly, the roof was damaged and plaintiffs spent 04 lacs rupees on repair of the same. Defendants have denied the claim of the plaintiffs.

12. The three witnesses produced by the plaintiffs who recorded their statement in favour of the plaintiffs, focused mainly on the fact averted in prayer alif of the plaint. Only in the statements of PW-01, the instant issue was addressed in his examination in chief which too was a mere reproduction of facts averted in the plaint

and no new fact was brought on record which can strengthened the stance of the plaintiffs regarding the issue in question. The statements of others PWs are silent regarding the instant issue.

13. Hence, in such situation where a fact averted in plaint has no documentary evidence on its back, no admission on behalf of defendants, and no complete and express statements of witnesses; the plaintiffs have failed to prove the said fact. Hence, the issue is decided in negative.

ISSUE NO. 1 & 4:

Whether the plaintiffs have got cause of action?

Whether the plaintiffs are entitled to the decree as prayed for?

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14. The discussions on the above referred issues show that plaintiffs have failed to prove their case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, they have got no cause of action to claim recovery or damages. Therefore, the plaintiffs are not entitled to the decree as prayed for.

RELIEF:

15. The detailed discussion on issues mentioned above transpires that the plaintiffs have failed to prove their case against the defendants by proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is dismissed.
Costs to follow the events.

16. File be consigned to record room after its necessary completion and compilation.

Announced
14.12.2022

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CERTIFICATE: -

Certified that this judgment consists of seven (07) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

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Orakzai (At Baber Mela)