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

Original Civil suit No.....27/1
Date of institution10.11.2020
Date of Transfer In06.07.2022
Date of decision14.12.2022

1. Haji Akbar Jan S/O Gul Hassan
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. Lahore Khan S/o Syed Nazar

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

.....(Defendant)

**SUIT FOR DECLARATION, PERMANENT INJUNCTION AND
DAMAGES**

JUDGMENT:

14.12.2022

1. The leading facts of the case are that the plaintiffs are seeking
declaration and permanent injunction to the effect that the

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plaintiffs are owner in possession of the suit property fully detailed in the head note of the plaint and that the defendant has restrained the plaintiffs from cultivating the same fifteen years ago and since then the disputed property remained uncultivated. The plaintiffs also prayed for Damages (detailed in the headnote of the plaint) in shape of possible produce which the suit property might have produced in the said 15 years, in which the suit property remained un-cultivated. The plaintiffs also prayed for damages in shape of expenses which is needed for the maintenance of the suit property at present.

2. After due process of summons the defendant 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 defendant claimed that the present suit is aimed at pressurizing the defendant to settle a dispute relating to return of 2 lac and 90 thousand rupees by the plaintiffs to the defendant. Moreover, during the pendency of the suit, the plaintiff passed away and afterwards their 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 the plaintiffs are owner in possession of disputed property?*
3. *Whether defendant has illegally restrained plaintiffs from cultivation the disputed property for the last fifteen years,*

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hence plaintiffs are entitled to receive Rs. 60,000/- (Sixty Thousand) from the defendant as cost of produce?

4. *Whether Rs.290,000/- (Two Lacs ninety thousand) of defendant is outstanding against the plaintiffs?*
5. *Whether plaintiffs are entitled to the decree as prayed for?*
6. *Relief.*

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	Power of Attorney is Ex.PW-1/1. Copy of CNIC is Ex.PW-1/2
PW-2	Muhammad Shahood S/o Ghani Badshah Qoam Rabia Khel, District Orakzai	Copy of CNIC is Ex.PW-2/1
PW-3	Muhammad Kabir Khan S/o Noor Muhammad Qoam Rabia Khel, District Orakzai	Copy of CNIC is Ex.PW-3/1

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. Copy of CNIC is Ex.DW-1/2

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

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submitted that the title of suit property remained un-challenged in the statement of defense witness and in pleadings and also sufficient evidence is available in shape of the statements of the plaintiffs' witnesses and that the suit property was forcefully closed for all agricultural activities by the defendant.

7. learned Counsel for the Defendant Mr. Sana Ullah Advocate, argued that the plaintiffs have to return 2 lacs and 90 lacs rupees to the defendant which was given to them by defendant in loan and in order to pressurize the defendant to back-off from his claim, the instant suit was filed. 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 are owner in possession of the disputed property?

9. The onus to prove this issue was on the plaintiffs. The Claim of plaintiffs is that they are lawful owner in possession of suit property. Plaintiffs, in order to discharge this duty, produced three witnesses and statement of the witnesses regarding the title of the suit property remained un shattered. Even in the written statement and in the statement of the defendant witness the ownership of the plaintiffs were not challenged. And in absence of any revenue record and title deeds, statements of the witnesses on oath are considered to bring forth the facts. In the instant case, the

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statements of the plaintiffs' witnesses remained consistent regarding the ownership of the plaintiffs over the disputed property. Moreover, the defendant remained silent regarding the ownership of the suit property in the pleading and the statement of defendant witnesses, which ostensibly amounts to admission of the same. Hence, the issue is decided in positive and in favor of the plaintiffs.

ISSUE NO.3:

Whether defendant has illegally restrained plaintiffs from cultivation the disputed property for the last fifteen years, hence plaintiffs are entitled to receive Rs. 60,000/- (Sixty Thousand) from the defendant as const of produce?

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10. The onus of proving the issue was on the plaintiffs. Plaintiffs are seeking damages fully detailed in the head note of the plaint for the reason that the defendant has restrained the plaintiffs, their tenant and all other persons to cultivate the suit property forcibly, commonly known in this part of the province as (Khaiat Band Karna). Defendant has denied the claim of the plaintiffs.

11. Plaintiffs produced three witnesses who recorded their statement and contended that the plaintiffs were restrained by the defendant from cultivation of the disputed property and that from the last 15 years the suit property is laying idle. However, they were not clear and consistent in their statement that when and in what manner and why the defendant has restrained the father of the plaintiffs to cultivate the land.

12. Moreover, there is no documentary proof of any kind on the file

which shows that plaintiffs or their father has either approached any forum in these 15 years or the matter has been entrusted to a Jirga for decision. Though a document is attached with the plaint but the same don't clearly reveals that purpose for which the failed jirga proceedings were initiated between the parties. Moreover, the document doesn't bear the signature of the defendant. Neither was the document exhibited nor proved during evidence.

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13. Hence, in such circumstances where plaintiffs failed to produce any document, disinterested oral evidence and in absence of any admission on the part of the defendant, the plaintiffs failed to prove the fact that the defendant has restrained the plaintiffs from cultivation of the suit property.

14. Hence, in view of above discussion, issues No. 3 is decided in negative and against the plaintiffs.

ISSUE NO. 4:

Whether Rs.290,000/- (Two Lacs ninety thousand) of defendant is outstanding against the plaintiffs?

15. The onus of proving this fact was on defendant as the same was asserted in the written statement. The amount of rupees 290,000/- claimed by the defendant is laying outstanding against the plaintiffs. Defendant himself appeared as DW-1 and claimed the same fact in his statement.

16. However, the defendant failed to produce a single witness or a document which might have proved the fact that he had given the said amount to the plaintiffs or plaintiffs have failed to pay the same back. Hence, issues No. 4 is decided in negative.

ISSUE NO. 1 & 5:

Whether the plaintiffs have got cause of action?

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

17. The discussion 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 damages. Therefore, the plaintiffs are not entitled to the decree in toto as prayed for. However, since issue no.2 is decided in positive and in favor of the plaintiffs for the reasons mentioned therein, therefore, the suit is partially decreed up to the extent of declaration only.

RELIEF:

18. The detailed discussion on issues mentioned above transpires that the plaintiffs have failed to prove their case against the defendant by proceeding cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is partially decreed up to the extent of declaration only.

Costs to follow the events.

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

Announced
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