



IN THE COURT OF ZAHIR KHAN CIVIL JUDGE -I, KALAYA, ORAKZAI

Case #	=	9/1 of 2021.
Date of Original Institution	=	02.06.2021
Date of Present Institution	=	19.06.2021
Date of Decision	=	21.09.2022

1. Abdul Raziq S/O Muhammad Sadiq,
2. Abdul Qadir S/O Khan Muhammad,
3. Jumma Gul S/O Ali Muhammad,
4. Abdul Khabeer S/O Muhammad Zareen,
5. Gulab Gul S/O Khani Badshah,
6. Hayat Gul S/O Muhammad Qasim,
7. Muhammad Shafiq S/O Fazal Khaliq and
8. Nawaz Khan S/O Zeebar Shah


All R/O Qaum Mishti, Tappa Darwi Khel, Village Lerri, Tehsil Central,
District Orakzai

.....(Plaintiffs)

Versus

1. Yar Jan S/O Raza Khan,
2. Basar Ullah Jan S/O Sarwan,
3. Amal Jan S/O Namdar,
4. Noormat Khan S/O Kochay,
5. Talib Jan S/O Taza Khan,
6. Kemiya Jan and
7. Safar Gul

All R/O of Qaum Aka Khel, Tappa Maroof Khel, Tehsil Central,
District Orakzai.


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ZAHIR KHAN
Civil Judge/IM
Kalaya Orakzai

.....(Defendants)

**SUIT FOR DECLARATION CUM-PERMANENT INJUNCTION AND
POSSESSION**

Order No. 21


21.09.2022

Plaintiff No. 1 for himself and as special attorney for plaintiff No. 2 to 8 present. Ex-parte arguments already heard and record perused.

Through this ex-parte order, I am going to decide the suit in hand filed by plaintiffs against the defendants.

Brief facts of the case in hand are that plaintiff Abdul Raziq and 07 others have filed the instant suit for declaration cum-permanent injunction and possession as alternate against the defendant Yar Jan and 06 others to the effect that plaintiffs belong to Mishti, Tappa Darwi Khel, Tehsil Central, District Orakzai and they are lawful owners in possession of the suit property detailed through boundaries in the head note of the plaint. That the suit property is their ancestral ownership and defendants, who belong to Qaum Aka Khel, Tappa Marof Khel, District Khyber, have got no concern whatsoever with the suit property. That defendants be restrained from interference in possession of plaintiffs, changing nature of suit property and its alienation through sale etc. That defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.

Defendants were summoned but they did not appear before the


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court to contest the suit despite service, therefore, they were placed and

proceeded against ex-parte vide order dated 28.06.2021. Thereafter, plaintiffs were allowed to produce their ex-parte evidence. List of witnesses was submitted.

Thereafter, Plaintiffs produced three witnesses in support of their claim and contention.

Abu Bakar S/O Sahib Gul, co-villager of plaintiffs, appeared and deposed as PW-01. He supported the claim of plaintiffs. Copy of his CNIC is Ex-PW-1/1.

Plaintiff No. 1 namely Abdur Raziq, who is special attorney for plaintiffs No. 2 to 8, appeared and deposed as PW-02. He reiterated the averments of plaint. Special power of attorney is Ex. PW-2/1 and copy of his CNIC is Ex. PW-2/2. He lastly requested for decree of suit in favour of plaintiffs against the defendants as prayed for.


Izat Khan S/O Nawab Khan, co-villager of plaintiffs, appeared and deposed as PW-03. He also supported the claim of plaintiffs. Copy of his CNIC is Ex-PW-3/1.

Thereafter, ex-parte evidence of plaintiffs was closed and ex-parte arguments were heard.

As mentioned above, plaintiffs have sought declaration cum-permanent injunction and possession as alternate to the effect that the suit property is their ancestral ownership and they are in possession.

Defendants, who belong to District Khyber have got no concern

whatsoever with the suit property and they be restrained from


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interference in possession of plaintiffs, changing nature of suit property and its alienation in favour of others through sale etc.

Although there is nothing in rebuttal due to ex-parte but even then, plaintiffs were required to produce cogent, convincing and reliable evidence to establish that the suit property was inherited by plaintiffs from their forefathers and that defendants have got no concern whatsoever with the same. As per averments of plaint, the suit property is situated at Mishti, Tappa Darwi Khel, Village Lerri, Tehsil Central. The subject matter of the suit is immovable property and where subject matter of the suit is immovable property, the plaint shall contain full description of the property, sufficient to identify the same, so that there could be no confusion or hardship at the time of execution of decree. Court cannot pass a vague decree which cannot be executed.

Allegedly, plaintiffs have inherited the suit property from their forefathers but no death certificate of predecessors of the plaintiffs was produced and exhibited during trial. No pedigree table is available on file. There is nothing on record which could prove that the suit property was the ownership of predecessors of plaintiffs and they inherited the same. It is not clarified from whom plaintiffs inherited the suit property. Per contention of plaintiffs, plaintiffs and defendants are the elders of their families. All the necessary parties to the suit have not been arrayed as party which is also fatal to the case of plaintiffs.



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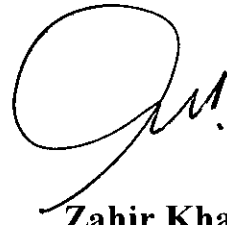
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Oral evidence produced by plaintiffs is also insufficient to prove their claim. No elder/malak was produced by plaintiffs before the court in support of their claim and contention.

Plaintiffs failed to prove their case through cogent, convincing and reliable documentary and oral evidence, therefore, suit of plaintiffs is hereby dismissed. No order as to cost.

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

ANNOUNCED
21.09.2022



Zahir Khan
Civil Judge-I, Kalaya, Orakzai