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

Civil suit No 12/1 of 2023
Date of original institution 12.02.2020
Date of institution in this court 30.01.2023
Date of decision 12.03.2024

1. Nikmat Ali S/o Safdar Ali
2. Hikmat Ali S/o Safdar Ali
3. Nowbat Ali S/o Safdar Ali
4. Tariq Ali S/o Gulfar Ali
5. Zahir Ali S/o Gulfar Ali

All residents of Bakhkani, And khel Bala, District Orakzai.

..... (Plaintiffs)

Versus

1. Mastan Ali S/o Ali Mehdi
2. Awan Ali S/o Muhammad Ali
3. Angor Ali S/o Ali Nabi
4. Meer Nabi S/o Ali Nabi
5. Gulshan Ali S/o Rishwan Ali
6. Rizwan Ali S/o Muhammad Ali
7. Eidath Ali S/o Rizwan Ali
8. Noshir Ali S/o Rizwan Ali
9. Sher Shah S/o Rizwan Ali
10. Tajid Ali S/o Nadar Ali
11. Khapoor Ali S/o Nadar Ali
12. Shamim Ali S/o Nadar Ali
13. Yasmin Ali S/o Ghulab Ali
14. Hussain Ghulam S/o Muhammad Ghulam
15. Razim Ali S/o Hassan Ghulam
16. Jamil Hassan S/o Dawood Ali

All residents of Bakhkani, And khel Bala, District Orakzai.

.....(Defendants)

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SUIT FOR DECLARATION, PERMANENT & MANDATORY INJUNCTION AND POSSESSION.

JUDGMENT:

1. Brief facts of the case No.12/1 are that plaintiffs filed the instant suit for declaration, permanent & mandatory injunction to the effect that they are owner in possession of 1/7 share of the suit property according to the map annexed with the plaint. That a jirga was convened on 03.11.1992 between plaintiffs and defendants in which jirga members gave their opinion that if defendants take Holy oath on the fact that plaintiffs don't have 1/7 share in the disputed property then the dispute will be settled in favour of the defendants. However, defendants refrained from taking oath, hence, the Jirga declared 1/7 share of the suit property as ownership of plaintiffs. Moreover, through another jirga dated 27.08.1994 a person namely Qamber Ali had given the share of plaintiffs in the suit property as per Jirga deed dated 03.11.1992. That the defendants have no right to deny the shares of the plaintiffs in the suit property. That defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.

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2. The defendants also filed a separate suit for declaration, permanent & mandatory injunction to the effect that the house alongwith landed property detailed in their suit in which the plaintiffs are residing, is ownership of defendants which was given to them for safe keeping and as tenants. Defendants also prayed for possession through eviction

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of plaintiffs. They also claimed recovery of Rs.5,000,000/- from the present plaintiffs.

3. After due process of summons in both the cases, the defendants appeared in person and contested the suit by submitting written statement in both cases respectively, in which contention of the plaintiffs were resisted on many legal as well as factual grounds.
4. Both the cases were consolidated upon requests of the parties Vide Order Dated 08.02.2023 in Case No.12/1.
5. The divergent pleadings of the parties were reduced into the following consolidated issues.

CONSOLIDATED ISSUES.

1. *Whether plaintiffs of case No.12/1 have got cause of action?*
2. *Whether plaintiffs of case No.13/1 have got cause of action?*
3. *Whether the plaintiffs of case No.12/1 are estopped to sue?*
4. *Whether the suit of the plaintiffs of case No.12/1 is time barred?*
5. *Whether the plaintiffs of case No.12/1 are owner in possession of 1/7 shares in the suit property and the same fact is agreed upon/admitted by the defendants through jirga decisions dated 03.11.1992 and 27.08.1994?*
6. *Whether plaintiffs of case No.13/1 are owners of the disputed house and land and the same was given to the defendants for safe keeping and for cultivation by their ancestors?*
7. *Whether plaintiffs of case No.13/1 are owners in possession of the disputed house and land and the same are in their possession since long and the same has been improved by the defendants?*
8. *Whether matter and controversy in case No.13/1 is already resolved through jirga verdict dated 10.11.1992 and*

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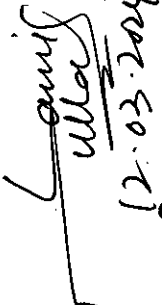
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9. Whether plaintiffs of case No.12/1 is entitled to the decree as prayed for?
10. Whether plaintiffs of case No.13/1 is entitled to the decree as prayed for?
11. Relief.

6. Parties were afforded with ample opportunity to adduce evidence. Plaintiffs in support of their claim and contention produced 06 Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Ghafil Rehman S/O Muhammad Rafiq Resident of Qoam Stori Khel, Kalaya PO Taazi Khel Lower Kalaya, District Orakzai.	<ul style="list-style-type: none"> • Copy of Jirga deed is Ex.PW-1/1. • Copy of CNIC is Ex.PW-1/x-1.
PW-2	Syed Muhammad Ameer Jan S/O Mir Syed (Marhoom) Resident of Qoam Stori Khel, Tappa Baba Nawasi, Lower Kalaya, District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.PW-2/1.
PW-3	Kamil Khan S/o Ghulam Rasheed Resident of Qoam Feroz Khel, Tehsil Lower, District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.PW-3/1.
PW-4	Wahid Ali S/o Ghulam Ali Resident of Qoam Stori Khel, Tappa And Khel Bala, Lower District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.PW-4/x-1.
PW-5	Ashraf Hussain S/o Ahmad	


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	Ali Resident of Qoam Mani Khel, Tappa Mirwas Khel Kalaya, District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.PW-5/x-1.
PW-6	Tariq Ali S/o Gulfar Ali S/o Qoam Stori Khel, Tappa And Khel District Orakzai.	<ul style="list-style-type: none"> • Special Power of attorney is Ex.PW-6/1. • Copy of Jirga Verdicts dated 03.11.1992 is Ex.PW-6/2. • Special Power of attorney on behalf of Legal Heirs of Hikmat Ali is Ex.PW-6/3. • Copy of Jirga verdict dated 27.08.1994 is Mark-A. • Copy of written deed is Mark-B

Defendants in support of his claim and contention produced five (05) witnesses. Detail of defendant's witnesses and exhibited documents are as under;

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WITNESSES		EXHIBITIONS
DW-1	Shahadat Ali S/O Rizwan Ali Resident of Qoam Stori Khel, Tappa And Khel Bala, District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.DW-1/1.
DW-2	Angor Ali S/o Ali Nabi Resident of Qoam Stori Khel, Tappa And Khel, District Orakzai.	<ul style="list-style-type: none"> • Copy of Jirga Deed as Ex. DW-2/1.
DW-3	Razim Ali S/o Hassan Ghulam Resident of Qoam Stori Khel, District Orakzai.	<ul style="list-style-type: none"> • Copy of CNIC is Ex.DW-3/1.

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DW-4	Gul Shad Ali S/o Rishwan Ali resident of Qoam Stori Khel, District Orakzai.	<ul style="list-style-type: none">• Copy of CNIC is Ex.DW-4/1.
PW-5	Naeem Ali S/o Nadar Ali resident of Qoam Stori Khel, Tappa And Khel, Tehsil Lower District Orakzai.	<ul style="list-style-type: none">• Special Power of attorney is Ex.DW-5/1.• Copy of Iqrar Nama is Ex.DW-5/2.• Copy of document in shape of CNIC is Ex.DW-5/x-2• Copy of Service card is Ex.DW-5/x-3.• Copy of Domicile Certificates consists of 3 pages is Ex.DW-5/x-4.

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7. Learned counsel for the plaintiffs, Mr. Javid Muhammad Punji Advocate argued that plaintiffs have produced cogent evidence and reliable witnesses to prove that the plaintiffs are residing in the area since long and have shares in the property situated in Bakhkani, Andh Khel, District Orakzai. The witnesses are consistent in their statements that a jirga has taken place which has decided the issue in favour of the plaintiffs by placing oath of 10 persons on the defendants. That defendant failed to take oath as per direction of the Jirga and ownership right devolved upon the plaintiffs. Further argued that in absence of any documentary evidence in District Orakzai, plaintiffs have proved their case.

8. Learned counsel for the defendants, Mr. Syed Hamza Gillani

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Advocate argued that the plaintiffs have not produced sufficient evidence in order to proof their case. That the jirga decision was not conclusive. That the plaintiffs have failed to point out description and measurement of suit property, otherwise, Bakhkani Andh Khel is a vast area and the suit of plaintiffs don't specify the respective 1/7 Shares in the suit property. Moreover, the plaintiffs have sought declaration in respect of their share without seeking partition from this court. In such a situation where even, the suit property is not specified, no effective decree can be granted to the plaintiffs. Furthermore, plaintiffs don't have any documentary proof in support of their stance.

9. 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.3:

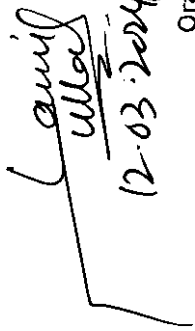
Whether the plaintiffs of case No.12/1 are estopped to sue?

10. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants. Even otherwise, there is nothing on available record which shows that the plaintiffs are estopped to sue the defendants in this court. Therefore, issue is decided in negative and against the defendants.

ISSUE NO.4:

Whether the suit of the plaintiffs of case No.12/1 is time barred?

11. The onus to prove this issue was on the defendants. The plaintiffs filed


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suit for declaration and permanent injunction. As per averments of the plaintiff, cause of action for the last time accrued to the plaintiffs few days prior to the institution of this suit, when the defendants denied ownership of plaintiffs and interfered in the disputed property. There is nothing available on record which can suggest the fact that the suit is time barred.

- 12. Moreover, period of limitation for filling declaratory suit Under Article 120 of limitation Act, is six years. Furthermore, after the 25th constitutional Amendment Act, 2018, all federal and provincial law extended to the newly merged Districts in 2018. Therefore, it is held that the suit is well within time. Hence, the issue is decided in negative.

ISSUE NO.5:

Whether the plaintiffs of case No.12/1 are owner in possession of 1/7 shares in the suit property and the same fact is agreed upon/admitted by the defendants through jirga decisions dated 03.11.1992 and 27.08.1994?

- 13. The claim of the plaintiffs is that they are the co-owner in possession of 1/7 share of the suit property and defendants have no right to deny the legal rights of the plaintiffs. The plaintiffs lay their claim based on a jirga decision that was convened on 03.11.1992 between plaintiffs and defendants in which jirga members gave their opinion that if defendants take Holy oath on the fact that plaintiffs don't have 1/7 share in the disputed property then the dispute will be settled in favour of the defendants. However, defendants refrained from taking oath, hence, the Jirga declared 1/7 share of the suit property as ownership of

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plaintiffs. Moreover, through another jirga dated 27.08.1994 a person namely Qamber Ali had given the share of plaintiffs in the suit property as per Jirga deed dated 03.11.1992. Burden of proof regarding the issue was on plaintiffs. Plaintiffs in order to discharge this duty, produced six witnesses. The essence of their statements which helped in deciding the issue are as under.

14. Ghafil Rehman, who deposed as PW-01, testified the contents of jirga dated 03.11.1992 which is exhibited as Ex.PW 1/1. The said PW was jirga member and also testified that Ex.PW 1/1 correctly bears his signature. That said PW recorded in his cross examination that it is not mentioned in the jirga decision exhibited as Ex.PW 1/1 that the parties have either given consent or bond to the jirga for decision between them. He also admitted that he don't know whether the disputed property is partitioned or not.

15. PW-02 and PW-03 is the statement of Syed Ameer Jan and Kamil Khan, who are sons of jirga members namely Mir Syed and Ghulam Rasheed respectively. The said PWs testified the signature of their late fathers on the jirga deed dated 03.11.1992, exhibited as Ex.PW 1/1. The said PW recorded in their cross examination that they are unaware of the contents of the jirga decision.

16. Wahid Ali deposed as PW-04 and stated in his examination in chief that we jirga members had conducted jirga between the parties and testified the contents of jirga deed dated 03.11.1992 exhibited as Ex.PW 1/1. He also said that the scribe of the jirga was Syed Meer Imam. That said PW recorded in his cross examination that I had

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enmity with the defendants against whom I am deposing but the same is amicably resolved now.

17. Similarly, Ashraf Hussain who deposed as PW-05 is also a jirga member of jirga dated 03.11.1992. He admitted that his name is mentioned as Ashraf Ali in the jirga deed.

18. Tariq Ali who is power of attorney of the plaintiffs in the instant suit deposed as PW-06, recorded his examination in chief in support of the claim and contention of the plaintiffs as asserted in the plaint. He also stated that Qamber Ali who belong to the family of defendants have admitted the share of plaintiffs in the property through Jirga deed dated 27.08.1994. The said PW admitted in his cross examination that no description of suit property is mentioned in the plaint. He also admitted that in jirga deed dated 03.11.1992 the description of suit property is also not mentioned there. He also admitted that the person namely Qamber Ali is also not made party to the present case. He also admitted that in jirga deed dated 27.08.1994, 1/7 shares in the property is not mentioned there.

19. The statements of the plaintiffs' witnesses brought the facts before the court, mentioned here in after, which provided reason for deciding the issues. The plaintiffs lay their claim primarily on a Jirga deed 03.11.1992 which is Ex.PW-1/1. The plaintiffs although produced their witnesses to prove this jirga deed but perusal of the Jirga deed reveals that the same is not conclusive in itself. No logical conclusion can be drawn from the said Jirga deed. The said Jirga has also not conclusively decided the issue rather kept the dispute in an abeyance.

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It is also pertinent to mentioned here that neither the Jirga deed has been signed by the defendants nor the defendants have admitted the same. Moreover, the Jirga deed do not mention whether any consent or bond has been taken by the Jirga members from the parties which is the usual practice. The same fact has also been admitted by the PWs.

20. Furthermore, the plaintiffs have not specified the property in which they claim 1/7 shares. The plaintiffs have annexed various map with the plaint but has failed to point out the specific portion of land in which they claim their share. None of the map is exhibited in the course of evidence. Furthermore, the plaintiffs have filed the present suit to the extent of declaration only and no relief of partition has been sought.

21. The plaintiffs have further claim in plaint that a person namely Qamber Ali has admitted their claim in the year 1994 and has written a deed dated 27.08.1994 in their favour which is Mark-A and is placed on file. But the plaintiffs have neither produced the person namely Qamber Ali nor have they proved the said deed by producing even a single witness thereof.

22. Keeping in view the above discussion, it is held that plaintiffs have failed to produced cogent, convincing and reliable evidence in support of their claim, therefore, based on their evidence and admissions made by the plaintiff's witnesses, issue No.05 is decided in negative and against the plaintiffs.

ISSUE NO.06, 07 & 08:

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06. *Whether plaintiffs of case No.13/1 are owners of the disputed house and land and the same was given to the defendants for safe keeping and for cultivation by their ancestors?*
07. *Whether plaintiffs of case No.13/1 are owners in possession of the disputed house and land and the same are in their possession since long and the same has been improved by the defendants?*
08. *Whether matter and controversy in case No.13/1 is already resolved through jirga verdict dated 10.11.1992 and 03.11.1992?*

23. All the issues are interlinked and are framed on the basis of claim and contentions in the subsequently filed suit, therefore, taken together for discussion.

24. The defendants in the instant case have filed a counter claim against the plaintiffs regarding the same subject matter in case No.13/1 of 2020. Plaintiffs of Case No.13/1 claimed that the house in which Hikmat Ali and others are residing alongwith adjacent property is ownership of the plaintiffs which were given to the defendants by ancestors of the plaintiffs on basis of tenancy. Burdens of proof regarding the issue was on plaintiffs of Case No.13/1. While defendants claimed in their written statement that they have possession of the suit property and the dispute was decided through Jirga decisions dated 10.11.1992 and 03.11.1992. Plaintiffs in order to proof their stance produced five witnesses and their statement was recorded as DWs in the instant case as both the cases were consolidated together. The essence of the statements of DWS are as Follows:

25. Shahadat Ali deposed as DW-01 and recorded in his statement that

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when the plaintiffs migrated to the present land, the ancestors of defendants had given the disputed house alongwith land for their residence. The said PW also stated that in his examination in chief that beside house plaintiffs have no other ownership right in our land. The said PW admitted in his cross examination that he don't know whether Mastan Ali, the present defendants had filed any suit on the plaintiffs. Meaning thereby that the present DW is unaware of the claim of the defendants. The said PW admitted possession of the plaintiffs over the disputed house. Nothing incriminating and worth mentioning regarding the issues were recorded in cross examination of the said DW.

26. Angor Ali and Razim Gul, deposed as DW-02 and DW-03 respectively and recorded in their statement that our ancestors had brought the plaintiffs of instant suit in this land and had given them house to live in. The said PWs also stated in their examination in chief that besides the house, plaintiffs have no other ownership right in our land. Nothing incriminating and worth mentioning regarding the issues were recorded in cross examination of the said DWs. Similarly, PW-04 also recorded his statement same as the above-mentioned witnesses and no new facts was brought on record in his statement.

27. Naeem Ali, attorney of defendants deposed as DW-05 stated in examination in chief that the plaintiffs don't have any share in the suit property except their dwelling house which were given to them by our ancestors. That the plaintiffs are Karigar by cast and they don't have any ownership right in our land. The said PW admitted in his cross

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examination that there is no documentary evidence regarding handing over of the property to the plaintiffs by their ancestors.

28. The statements of the defendants' witnesses brought the facts before the court, mentioned hereinafter, which provided reason for deciding the issues. Firstly, the possession and ownership of the plaintiffs regarding the house is admitted by all witnesses of defendants. Admittedly as per record, the plaintiffs have possession of the disputed house. It is pertinent to mention here that as per statements of DWs, their ancestors had given the disputed house and land surrounding it to the plaintiffs but it is not clear in their statements that whether the same was given to them on tenancy basis or for good. As far as issue No.08 is concerned, the same was not addressed in evidence and possession and ownership of the plaintiffs up to the extent of house is admitted by defendants.

29. Keeping in view the above discussion, it is held that defendants have failed to produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.06 is decided in negative and against the defendants. As far as issues No.07 & 08 are concerned, possession and ownership of the plaintiffs regarding the house and land is admitted by the witnesses of defendants, therefore, both the issues are decided in positive and in favour of the instant plaintiffs.

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ISSUE NO. 1 and 9:

Whether plaintiffs of case No.12/1 have got cause of action?

Whether plaintiffs of case No.12/1 are entitled to the decree as

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prayed for?


- 30. Both these issues are interlinked, therefore, are taken together for discussion.
- 31. Keeping in view the issue wise discussion above, it is held that plaintiffs of Case No. 12/1 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. Therefore, the plaintiffs are not entitled to the decree as prayed for.
- 32. The issues No.01 and 09 are decided in negative and against the plaintiffs in case No.12/1.

ISSUE NO. 2 and 10:

Whether plaintiffs of case No.13/1 have got cause of action?

Whether plaintiffs of case No.13/1 are entitled to the decree as prayed for?

- 33. Both these issues are interlinked, therefore, are taken together for discussion.
- 34. Keeping in view the issue wise discussion above, it is held that plaintiffs of Case No. 13/1 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. Therefore, the plaintiffs are not entitled to the decree as prayed for.
- 35. The issues No.02 and 10 are decided in negative and against the plaintiffs in case No.13/1.


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RELIEF:


- 36. The detailed discussion on issues mentioned above transpires that the plaintiffs have failed to prove their case against the defendants by

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proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is **Dismissed**.


- 37. Moreover, the counter suit filed by the defendants which was consolidated in the instant suit is also **Dismissed**, as the defendants have failed to prove that disputed house and land is their ownership. Needless to mention that the defendants failed to bring forth any documentary proof and the DWs have admitted ownership and possession of the plaintiffs over the disputed house.
- 38. Costs to follow the events.
- 39. File be consigned to record room after its necessary completion and compilation.

Announced
12.03.2024

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CERTIFICATE: -

Certified that this judgment consists of sixteen (16) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

Sami Ullah

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