

49
57

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

Civil suit No 11/1 of 2024
Date of institution 13.02.2024
Date of decision 07.05.2024

1. Mst. Yasmin Khan W/O Anab Ali.
2. Suliman Khan S/o Anab Ali.

Both residents of Qoam Mishti, Tappa Haider Khel, District Orakzai.

..... (Plaintiffs)

Versus

1. Deputy Commissioner District Orakzai.
2. Assistant Commissioner District Orakzai.
3. Tehsildar Central Orakzai.
4. SHO PS Mishti District Orakzai.

.....(Defendants)

**SUIT FOR DECLARATION, PERMANENT & MANDATORY
INJUNCTION.**

JUDGMENT:

1. Brief facts of the case are that plaintiffs have filed the instant suit for declaration, permanent & mandatory injunction to the effect that they are permanent residents of District Orakzai and they have their own property in Mishti, Tappa Haider Khel. That the defendants have no right to refrain plaintiffs from seeking their rights and issue plaintiff No.02 his Domicile Certificate. That the defendants have wrongly lodged an FIR against the plaintiff No.02 for making bogus Domicile which is not register in their record. That the defendants were asked

Lamin Ullah
07.05.2024
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

time and again to admit the legal claim of plaintiffs and register the said Domicile in their record but in vain, hence, the present suit.

2. After due process of summons the defendant No.01 appeared through his representative and contested the suit by submitting written statement in which contention of the plaintiffs were resisted on many legal as well as factual grounds. Furthermore, defendant No.02 appeared on few dates but later on he was absent therefore, he was placed and proceeded ex-parte. Moreover, defendant No.03 & 04 was also proceeded ex-parte due to their absence from the court proceedings from day first.
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 estopped to sue?*
3. *Whether the suit of plaintiffs is bad in its present form?*
4. *Whether the plaintiffs are residents of District Orakzai?*
5. *Whether the domicile certificate of plaintiff No.02 is genuine and is liable to be entered in the official record of defendant No.01 to 03?*
6. *Whether the plaintiff is entitled to the decree as prayed for?*
7. *Relief.*

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiffs in support of their claim and contention produced 03 Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

Samir Ullah
07-05-2024
Sami Ullah
Civil Judge/JM-I
Orakzai (Babar Meja)

	WITNESSES	EXHIBITIS
PW-1	Mst. Yasmin Khan W/O Anab Ali Resident of Raisan District Hangu.	1. Copy of CNIC of her Husband namely Anab Ali is Ex.PW-1/1. 2. Copy of CNIC of her son namely Suliman Khan is Ex.PW-1/2. 3. Copy of her CNIC is Ex.PW-1/3. 4. Copy of CNIC of her son namely Shoaib Khan is Ex.PW-1/4. 5. Special Power of attorney is Ex.PW-1/5.
PW-2	Muhammad Javed S/O Jan Asghar Resident of Qoam Mishti, Tappa Haider Khel, Navi Mela District Orakzai.	Copy of his CNIC is Ex.PW-2/1.
PW-3	Waheed Ullah S/O Khadi Gul Resident of Qoam Mishti, Tappa Mamozai, Babara Laki, District Orakzai.	Copy of his CNIC is Ex.PW-3/1.

5. Defendants in support of their claim and contention produced one witness. Detail of defendant's witness and exhibited documents are as under;

Sami Ullah
07-05-2024
Sami Ullah
Civil Judge/JM-I
Orakzai at (Babar Mela)

	WITNESSES	EXHIBITIONS
DW-1	Saeed Ullah representative of Deputy Commissioner District Orakzai.	Authority Letter is Ex.DW-1/1.

6. Learned counsel for the plaintiffs Mr. Khursheed Alam Advocate argued that plaintiffs have produced cogent evidence and reliable

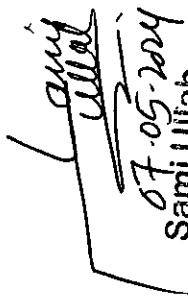
witnesses to prove that the plaintiffs are residents of District Orakzai.

7. District Attorney argued that the plaintiffs have not produced sufficient evidence to prove that the Domicile already issued to plaintiff No.02 is genuine and liable to be entered in the official record of defendants. Furthermore, plaintiffs don't have any documentary proof to that extent.
8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsel and District Attorney for both the parties, my issue-wise findings are as under:

ISSUE NO.2:

Whether the plaintiffs are estopped to sue?

9. 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.


 07.05.2024
 Sami Ullah
 Civil Judge/JM-I
 Orakzai (Babar Meta)

ISSUE NO.3:

Whether the suit of plaintiffs is bad in its present form?

10. This issue was framed keeping in view the pleadings in the instant case. Burden of proof of this issue was laid on defendants. However; defendants have not produced any oral or documentary evidence to prove that the instant suit is not maintainable being bad in its present form. Even during course of arguments District Attorney for the defendants failed to pinpoint any irregularity in the present form of

the suit, therefore, it is held that the form of suit is not bad. Moreover, the case pertained to resolve a controversial issue which needed pro and contra evidence. Therefore, it is maintainable in its present form. Issue is decided in favour of plaintiffs and against the defendants.

ISSUE NO.04 & 05:

Whether the plaintiffs are residents of District Orakzai?

Whether the domicile certificate of plaintiff No.02 is genuine and is liable to be entered in the official record of defendant No.01 to 03?

11. Both the issues are interlinked therefore, taken together for discussion. The claim of the plaintiffs is that they are permanent residents of District Orakzai and they have their own property in Mishti Tappa Haider Khel. That the defendants have no right to refrain plaintiffs from seeking their rights and issue them their Domicile Certificate. Burden of proof regarding the issues was on plaintiffs. Plaintiffs in order to discharge this duty, produced three witnesses. The essence of their statements which helped in deciding the issue are as under.

12. Plaintiff No.01 herself deposed as PW-01, while supporting their claim. She stated Suliman is her real son and he is currently performing his duty in Pakistan Army. She stated that we are permanent residents of District Orakzai and their permanent address i.e. Qoam Mishti, Tappa Haider Khel District Orakzai is mentioned in CNIC of father of Suliman (Plaintiff No.02) which is Ex.PW-1/1. She further stated that at the time of making domicile, her son was not

Amir Ullah
07.05.2024
Sami Ullah
Civil Judge/JM-I
Orakzai (Babar Mele)

matured and someone has committed fraud with him by providing him a Domicile Certificate without entering the same in the official record. Moreover, PW-01 also stated that her another son which is brother of plaintiff No.02 has permanent address of District Orakzai in his CNIC which is Ex.PW-1/4. She prayed for cancellation of Old Domicile Certificate and permission of issuance of new Domicile Certificate. Nothing incriminating was recorded in her cross examination. She also stated that some of her family members have CNIC with address of Hangu in them. She also negated the suggestion that Suliman has Domicile of any other District. She also stated that we have already applied for Domicile certificate which is pending before the Authority Concerned.

13. Similarly, PW-02 and PW-03 are the statements of Muhammad Javid and Waheed Ullah respectively, who supported the stance and contention of plaintiffs in their examination in chief and stated that plaintiffs belong to their caste and they know them personally. They stated that plaintiffs have their ancestral property in Qoam Mishti, Tappa Haider Khel Serwy Central District Orakzai. They stated that plaintiff No.02 has the right to Domicile Certificate. Nothing incriminating was recorded in their cross examination.

14. Plaintiffs closed their evidence after production of 03 witnesses in the instant case.

15. In rebuttal of the stance of the plaintiffs, defendants have produced one witness in support of their claim and contention.

Waheed Ullah
 07.05.2024
 Saini Ullah
 Civil Judge/JM-I
 Orakzai at (Babar Meela)

16. Saeed Ullah representative of Deputy Commissioner District Orakzai appeared before the court as DW-01 and recorded in his statement that Domicile of Muhammad Suliman (plaintiff No.02) was received by our office for verification and after initiating the process we found out that the said domicile was not entered in our record and the signatures on the same was also fake. After that the Learned DC initiated inquiry and upon conclusion of inquiry, an FIR was registered against the plaintiff No.02. The said DW admitted in his cross examination that the plaintiff No.02 has applied for cancellation of the said domicile but was not cancelled by the office. He also stated that no forensic/ laboratory report is present to the extent of signatures etc being fake. He also admitted that in CNIC of father and brother of plaintiff No.02 address of Orakzai is mentioned there. He also admitted that if the plaintiff No.02 apply for new domicile, we would have no objection.

Saeed Ullah
 Civil Judge/JM-I
 Orakzai (Babar Mela)

17. The statements of the plaintiffs' and defendants' witnesses brought the facts before the court, mentioned hereinafter, which provided reason for deciding the issues. Firstly, the witnesses were consistent in their statement that the plaintiffs belong to Qoam Mishti, Tappa Haider Khel District Orakzai and have their ancestral property there. Secondly, the record of Domicile concerned might not have been entered in the official record of District Administration but the plaintiffs are entitled to domicile certificate of this district. Moreover, as the representative of District Administration admitted in his statement that they would have no objection if the plaintiffs apply for

Domicile afresh and PW-01 in her statement has recorded that they have already applied for new Domicile.

18. Keeping in view the above discussion, it is held that plaintiffs produced cogent, convincing and reliable evidence to extent that they are residents of District Orakzai, hence issue No.04 is decided in their favour. As far as issue No.05 is concerned, the same is not proved by plaintiffs.

ISSUE NO. 1 and 6:

Whether plaintiffs have got cause of action?

Whether plaintiffs are entitled to the decree as prayed for?

19. Both these issues are interlinked, therefore, are taken together for discussion.

20. Keeping in view my issue wise discussion, it is held that plaintiffs have got cause of action and are entitled to the decree in their favour. Both these issues are decided in favor of plaintiffs and against the defendants.

Lamin Allah
Abul Hasan Ali Nadwi
Civil Judge/JM-I
Orakzai (Babar Meta)


RELIEF:

21. As a result of issue wise findings, suit of the plaintiffs succeeds. It is therefore, decreed. As the plaintiffs have sought relief of either cancellation of the said Domicile or entry of the same in official record of District Administration but as per procedure and short comings in granting the said relief, it cannot be granted. However, the proper relief as per procedure of issuance of domicile certificate and willingness of official witness regarding initiation of process for issuing domicile afresh, this court deems it appropriate after keeping

in consideration the Laws and Procedure that the plaintiffs application for new domicile certificate be processed as per procedure. Defendants are directed to entertain application of the plaintiffs as per Law and Procedure.


- 22. Cost to follow the events.
- 23. File be consigned to record room after its necessary completion and compilation.

Announced
07.05.2024

Sami Ullah

Sami Ullah
 Civil Judge/JM-I,
 Orakzai (At Baber Mela)

CERTIFICATE: -

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

Sami Ullah

Sami Ullah
 Civil Judge/JM-I,
 Orakzai (At Baber Mela)