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**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL  
JUDGE/JM, DISTRICT ORAKZAI**

Case No.....1/133 of 2021.

Date of Institution.....05.05.2021.

Date of Decision.....27.04.2024.

**Noormat Khan s/o Nasrullah Jan, R/O Qoum Mala Khel, Tappa Char  
Khela, Drey Sotai, Tehsil Upper, District Orakza**

.....**Complainant**

**VERSES**

- 1. Yarmin Shah**
- 2. Naseem Gul**
- 3. Zerhi Gul**

All sons of Zareen Gul, R/O Qoum Mala Khel, Tappa Char Khela, Drey  
Sotai, Tehsil Upper, District Orakzai

.....**Respondents**

**COMPLAINT U/S 133 CR.P.C FOR OPENING A PUBLIC  
THOROUGHFARE**

**JUDGEMENT**

**27.04.2024**

Petitioner Noormat Khan s/o Nasrullah Jan, R/O Malla  
Khel, Drey Sotai, Teshil Upper, District Orakzai has brought the  
instant complaint u/s 133 Cr.P.C against respondent Yarmin Shah,  
Naseem Gul, Zerhi Gul sons of Zareen Gul, R/O Malla Khel, Drey  
Sotai, Tehsil Upper, District Orakzai.

Brief facts of the complaint are that the complainant is  
a permanent resident of the above-mentioned village and has been  
residing there since his forefathers while the respondents are also

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Orakzai, Upper Mala

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permanent residents of the same village. That there is a public thoroughfare in the village which has been using by the people of the locality since their forefathers. That people of the village and surrounding areas take their cattle to the fields through the said thoroughfare and the people of the area are using the thoroughfare for their access to graveyard. That now the respondents have closed the thoroughfare for the complainant and other people by making obstacles and blocked the same by putting stones in the middle of the thoroughfare, due to which the complainant and other people are facing hardships. That due to blockage of the throughfare, it has become impossible for the complainant to pass ambulance over the same at the time of need. Furthermore, it has also made it difficult to take the dead body to the graveyard and to take ailing women to the hospital. That there are many people ready for evidence against the respondent including Muhammadi Khan, Habib Khan, Shandi Gul, Azmat Khan and Sharif Khan etc. That the defendants were asked time and again to open the public thoroughfare for access of the people of the area but the respondents refused and hence the instant complaint for removal of the nuisance/obstacles.

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Senior ( ) JUDGE/JM  
Orakzai at Jaber Mela

Statement u/s 200 Cr.P.C was recorded and the complaint sent for inquiry to the SHO, PS Upper Orakzai. The SHO submitted his inquiry report but vide order No. 04 dated: 01.06.2021, the SHO was ordered for re-inquiry into the matter. My learned predecessor in office vide order 09, Dated: 27.11.2021 dismissed the instant complaint in lemini.

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Being aggrieved from the order of the learned Civil Judge/Judicial Magistrate-I, Orakzai, the petitioner/complainant preferred criminal revision against the said order which was accepted by the learned AD&SJ, Orakzai and remanded the case file to this court for determination of answers to certain questions framed by him in his order dated: 14.02.2022.

The parties were directed to submit their list of witnesses which was submitted by both the parties whereafter the complainant was directed to produce its evidence. The complainant produced and recorded the statements of the following PWs;

PW-01 is the statement of complainant Noormat Khan who stated that he has filed the instant complaint u/s 133 Cr.P.C and the thoroughfare in question is under the use of local people since his forefathers. That the thoroughfare was being used by the local people and people of the village for the access of cattle and access of the people to their fields for cultivation. He added that the local people also used the thoroughfare for their access to the graveyard and the now the respondents have blocked the same by putting stones. He verified the contents of his complaint which is Ex.PW-

His statement recorded u/s 200 Cr.P.C as Ex.PW-1/2 which directly bears his signature. That his complaint was marked to SHO PS Upper Orakzai for inquiry. During cross-examination, he stated that he alone has filed the instant complaint. He admitted during cross-examination that the thoroughfare in question is not his ownership rather the same is joint ownership. He further admitted in

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his cross-examination that the disputed thoroughfare leads to his house along with 4/5 other houses and to graveyard and the same is in existence since his forefathers.

**PW-02:** Azmat Khan s/o Miran Khan stated that the disputed thoroughfare is under their use since their forefathers. That the thoroughfare in question was being constructed by NGO and in the meanwhile the respondent blocked the same by putting stones in the same. The houses of about 100 people are situated on the disputed thoroughfare.

**PW-03** is the statement of Aziz Khan s/o Miram Khan who stated that the thoroughfare in question is under their use since their forefathers and the same also leads to graveyard. During cross-examination he stated that about 100 houses are present in the village of the complainant.

**PW-04:** Afsar Khan s/o Noorab Khan stated that the thoroughfare in question is joint property and under the use of about 100/200 people. During cross-examination he stated that only 07 houses are present in the village of the complainant and the respondent. He also stated that the thoroughfare in question has been closed only for the vehicles and there is no restriction on the pedestrians. He also admitted that the thoroughfare in question is personal ownership of the respondents.

Inquiry officer Malak Janan, SI, the then SHO PS Dabori as CW. He stated that vide order dated: 05.05.2021, orders for conducting inquiry were issued, in pursuance of which one Zahid

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Amin SHO PS Dabori conducted inquiry and submitted his final report on 19.05.2021 which is seen and correctly bears the signature of Zahid Amin, verified by the CW. He exhibited the inquiry report as Ex.CW-1/1. The final report of the inquiry was rejected by the court vide its order dated: 01.06.2021. and issued orders for re-inquiry. In pursuance to the said order, he proceeded to the spot on 01.08.2021 and recording statements of respondents Yarmin Shah, Muhammad Hayat, Ghani Rehman and Mehboob Khan at the spot. He prepared the site plan which is correctly signed by him and is Ex. CW-1/2. He prepared final report on 03.08.2021 which is correct and correctly bears his signature and is Ex. CW-1/3. He admitted during cross examination that the disputed pathway is the ownership of Yarmin Shah and the same is not public thoroughfare. He further admitted that the disputed thoroughfare does not lead to the house of any other inhabitant of the area. During cross examination by the counsel for the complainant he stated that he has not shown the end of the disputed pathway as close end in his site plan Ex.CW-1/2.

On the other hand, counsel for the respondents Sana Ullah advocate relied upon the cross-examination of the witnesses produced by the complainant/petitioner and closed his evidence.

Arguments heard and available record perused.

It is the case of the complainant that he is resident of village Drey Sootai and has been residing there since his forefathers.

That thoroughfare leading to village is under the use of the parties and people of the locality since their forefathers and the people of

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the village and their cattle also use the same pathway for their access to fields and graveyard. That now respondents have blocked the thoroughfare by putting stones in the same due to which the petitioner has been suffering.

The petitioner/complainant produced as many as 04 PWs and cross-examined them along with CW one Malak Janan, the then SHO, PS Dabori. The complainant was bound firstly to prove that the pathway in question is a public thoroughfare and is under the use of many people, furthermore that the same has been blocked by the respondents by putting stones. In this respect, the complainant Noormat Khan recorded his own statement as PW-01. He repeated the contents of the complaint Ex. PW-1/1 and his statement recorded U/S 200 Cr. PC as Ex. PW-1/2. He stated that one Muhammadi Khan, Habib Khan, Shandi Gul, Azmat Khan and Sharif Khan are the witnesses of such illegal act of the respondent, but out of the said witnesses, he has only produced one Azmat Khan S/O Miran Khan as PW-02. The complainant has stated during his cross examination that the disputed thoroughfare leads to his house and 4/5 other houses. He also stated that the thoroughfare is his joint property with the respondent, while on the other hand PW-02 Azmat Khan has stated that disputed thoroughfare is under the use of about one hundred (100) houses. PW-03 has stated that village Drey Sootai consisted of 100 houses and the property in which the disputed thoroughfare is situated is not the ownership of the complainant. PW-04 also stated that the disputed thoroughfare is under the use of

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about 100/200 people which started from the house of the respondent and ended at the house of the complainant. But during cross-examination he stated that the village of the complainant and the respondent is consisted of only 07 houses. He also admitted that complainant is using the disputed thoroughfare as pedestrian and is closed for access to the house of complainant through vehicles. He also admitted that the thoroughfare is the ownership of the respondent. CW-01 in his cross-examination has categorically stated that the disputed thoroughfare is the personal property of the respondent and is not public thoroughfare. He also stated that the disputed thoroughfare does not lead to the house of any other inhabitant of the area except the complainant. The complaint of the complainant does not seem to be based on facts keeping in view the veracity in the statements of the PWs. Firstly; the complainant has alleged that the disputed thoroughfare is a public thoroughfare, but according to the statement of inquiry officer recorded as CW-01, the pathway does not lead to the house of other people except the complainant. Secondly; the complainant himself has stated that the thoroughfare leads to 4/5 houses apart from him and that the same is joint ownership, but his claim is not proved through cogent evidence because the statements of PW-02, PW-03 and PW-04 are contradictory with the statement of the complainant recorded as PW-01 and the statement of inquiry officer recorded as CW-01. PW-04 produced by the plaintiff and the inquiry officer have declared the thoroughfare as the exclusive ownership of the respondent. All these

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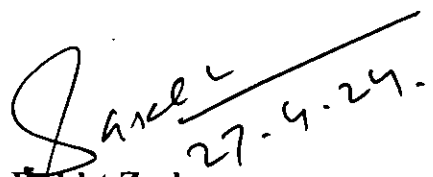
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contradictory statements lead to the conclusion that the evidence of the complainant is not based on facts and he failed to prove the factum that the disputed thoroughfare is a public thoroughfare and was under the use of the complainant for access to his house through vehicle before filing of the instant complaint. Furthermore, it is also not proved through evidence that when and in whose presence, the complainant has blocked the pathway by putting stones in the same. As far as, the pedestrian use of the pathway is concerned, there is no restriction on the complainant. The complaint of the complainant being devoid of merits is hereby **dismissed**.

Announced  
27.04.2024

  
Bakht Zada  
Senior Civil Judge/JM,  
Orakzai (at Baber Mela)

**CERTIFICATE**

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me

  
Bakht Zada  
Senior Civil Judge/JM,  
Orakzai (at Baber Mela)