

67

IN THE COURT OF BAKHT ZADA,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 81/1 (neem) 2022
Date of Original Institution: 22.08.2022
Date of Restoration: 28.06.2023
Date of Decision: 31.05.2024

Mst. Matao Jan D/O Syed Afzal R/O Qoum Mamozai, Tappa Ado Khel, Nasar Nawasi, Tehsil Upper, District Orakzai.

(Plaintiff)

VERSUS

- 1. Zaman Khan s/o Gul Haider**
- 2. Muhammad Shahid s/o Zaman Khan**
Both Qoum Mamozai, Tappa Mir Kalam Khel, Tehsil Upper, District Orakzai.

(Defendants)

SUIT FOR DECLARATION-CUM-PERPETUAL & MANDATORY INJUNCTIONS AND POSSESSION

JUDGEMENT:

31.05.2024

Plaintiff Mst. Matao Jan D/O Syed Afzal has brought the instant suit against defendants Zaman Khan S/O Gul Haider and Shahid S/O Zaman Khan for declaration-cum-perpetual & mandatory injunctions and possession to the effect that plaintiff being legal heir of her father Syed Afzal(deceased), brother deceased Abdul Raheem and mother deceased Mst. Saidana has become the owner of property, the details of which is given as per annexed site plan as under;

1. Mir Zada Trasawai:- Property measuring 1 ½

Jareb.

J. Akper
BAKHT ZADA
Senior Civil Judge JM
Orakzai @ Baber Mela

68

- a. Towards North: Landed property of Ali Haider etc.
- b. Towards West: Landed property of Shah Noor Nawasi.
- c. Towards South: Landed property of Piawo Din etc.
- d. Towards East: Landed property of Sarwar Khan.

2. *Property Takht in shape of jungle trees measuring about 04 Jareb.*

- a. Towards North: Property of Sharif Khan.
- b. Towards West: Property of Sarwar Khan.
- c. Towards South: Property of Rehmat Jamal.
- d. Towards East: Property of Kamalai.

3. *Property namely "Wacha Kada" measuring about 02 Jareb.*

- a. Towards North: Property of Zangi Khan.
- b. Towards West: Property of Rehmat Jamal.
- c. Towards South: Property of Ali Haider.
- d. Towards East: Property of Zaman Khan.

Saver
31.5.24
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

4. "Narayo Kada".

- a. Towards North: Property of district Khyber Afridi.
- b. Towards West: Property of Razi Khan.
- c. Towards South: Property of Zaman.
- d. Towards East: Property of Khyal Zada.

5. *Stara Seera, property measuring 2 ½ Jareb.*

- a. Towards North: Property of Khyal Bat Khan.
- b. Towards West: Property of Ali Akbar, Jamal. Etc.
- c. Towards South: Property of Khyal Zada.
- d. Towards East: Property of Jahangir Gul etc.

6. Property namely "Samandar Patay" measuring about 02 Jareb.

- a. Towards North: Property of Abdul Sattar.
- b. Towards West: Village Allah Dad Nawasi.
- c. Towards South: Property of Zangi Khan.
- d. Towards East: Jungle Nakhtar.

7. Property namely "Zarko Zhawar".

68

BAK 11 31.5.24
Senior Civil Judge/JM
Orakzai at Baber Mela

- 70
- a. Towards North: Property of Ghazi.
 - b. Towards West: Property of Zahoor Jan.
 - c. Towards South: Property of Zahoor and Gul Akbar.
 - d. Towards East: Property of Zaman.

8. Residential house measuring 02 Kanals.

- a. Towards North: Property of Ali Haider.
- b. Towards West: Property of Zaman.
- c. Towards South: Property of Khan.
- d. Towards East: Property of Sarwar Khan.

According to plaintiff she is owner of the above-mentioned property and the defendants have got no right to restrain the plaintiff from cultivation of the same and from raising construction over the same.

She alleged that the suit property was the ownership in possession of her father namely Syed Afzal and after his death, the same devolved upon the plaintiff, her mother Mst. Saidana and her brother Abdul Raheem. That later on, her brother Abdul Raheem also died and his shares in the suit property devolved upon the plaintiff and her mother. That after

BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

70
death of the mother of the plaintiff, the plaintiff being the only legal heir has become the owner of the suit property. That the defendants have got no concern with the suit property; therefore, the defendants have got no right to restrain her from enjoying the possession of the suit property. That the defendants were asked time and again to refrain from interference in the ownership in possession of the suit property, but the defendants refused and hence the instant suit.

Defendants were summoned who were placed and proceeded ex-parte on 12.01.2023 and the plaintiff was directed to submit list of witness and to produce her ex-parte evidence. The plaintiff produced and recorded her ex-parte evidence. My learned predecessor in office decreed the suit of the plaintiff ex-parte as prayed for against the defendants vide his ex-parte judgment and order dated: 16.03.2023.

That the defendants submitted application for setting aside ex-parte proceedings and decree dated: 16.03.2023 which was accepted on 28.09.2023 and the ex-parte proceedings, judgment and decree dated: 16.03.2023 were set aside and the defendants were directed to submit written statement. On 03.10.2023, the defendants submitted their written statement wherein, they have raised some legal and

factual objections in the light of which issues were framed on 17.10.2023.

72
The defendants submitted application for amended written statement which was dismissed vide order dated: 22.01.2024; however, the defendants were allowed to submit better written statement in order to explain their stance. The defendants submitted better written statement on 01.02.2024. The following issues were framed in the light of divergent pleadings of the parties.

Issues:

1. *Whether the plaintiff has got a cause of action?*
2. *Whether the suit property, the description of which is briefly given in the sketch of the suit property annexed with the plaint and in the heading of the plaint, devolved upon the plaintiff being the sole legal heir of deceased Syed Afzal, her brother deceased Abdul Raheem and her mother deceased Mst. Saidana?*
3. *Whether the defendants have paid fine of Rs. 80,000/- on account of firing at masque and they also paid payment on behalf of the brother of the plaintiff worth Rs. 100,000/- on account of the violation of sanctity of the holy Friday?*
4. *Whether the plaintiff has annexed with her plaint, the details of her shares in the suit property.*
5. *Whether the plaintiff is entitled to the decree as prayed for?*
6. *Relief?*

Parties were given opportunity to produce evidence in support of their respective claims. The plaintiff produced and recorded the

Signature
31-5-25
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

statements of following PWs;

PW-01: Muhammad Ayub s/o Noor Haider appeared as PW-01.

73
He stated that the plaintiff being daughter of Syed Afzal is owner of the suit property. That the suit property devolved upon the plaintiff after the death of her father Syed Afzal, her brother Abdul Raheem and her mother Mst. Saidana. His affidavit to the effect that plaintiff is the sole legal heir of the above-named deceased as Ex.PW-1/1. He was cross-examined by the counsel for the defendants.

PW-02 is the statement of Omat Shah s/o Abul Sattar. He also recorded his statement in support of the stance of the plaintiff and stated that the plaintiff is the sole legal heir of her deceased father, brother and mother.

PW-03 is the statement of Mehraban Khan s/o Mehboob Khan. He is special attorney for the plaintiff. His power of attorney is Ex.PW-3/1. He also exhibited the sketch/map of the suit property mentioned at Sr. No. 01 to Sr. No. 04 as Ex.PW-3/2 and the sketch of the suit property mentioned at Sr. No. 05 to Sr. No. 08 is Ex.PW-3/3. He was also cross-examined.

On the other hand, defendant No. 02, Muhammad Shahid s/o Zaman Khan himself and being attorney of defendant No. 01 recorded his statement as DW-01. He stated that father of the plaintiff was murdered by one Yousaf and Manan in 1984, the revenge of which was

31.5.24
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Babes Mela

74
taken by his grandfather namely Gul Haider s/o Sarwar Khan at the spot and due to the said enmity, they bore expenses/damages of Rs. 10,00,000/-. That brother of the plaintiff namely Abdul Raheem opened firing in the mosque due to which he was fined worth Rs. 80,000/- and on account of sanctity of the holy Friday, he was further fined worth Rs. 100,000/- which was paid by them and in lieu of the said amount, the plaintiff withdrew from the whole suit property in favour of the defendants. He admitted that he is ready to surrender the Shari share of the plaintiff in the suit property subject to payment of the damages. His CNIC is Ex.DW-1/1 and his power of attorney is Ex.DW-1/2. He was cross-examined by the counsel for the plaintiff at length.

DW-02 is the statement of Malak Meena Khan who also supported the stance of the defendants. He was also cross-examined by the counsel for the plaintiff at length.

After closing of evidence of the parties, arguments of the learned counsel for the parties were heard and available record perused.

My Issue wise findings are as under: -

Issues No. 02 & 04:

Both these issues are interlinked, hence, taken together for discussion.

BAI
Senior Civil Judge/JM
Orakzai at Baber Mela

75

It is the case of the plaintiff that her father namely Syed Afzal was the owner in possession of the suit property and after his death the suit property devolved upon her mother Mst. Saidana Bibi, her brother namely Abdul Raheem and the plaintiff herself. That later on her brother Abdul Raheem also died and his share in the suit property also devolved upon the plaintiff and her mother and now after death of her mother Mst. Saidana Bibi, the plaintiff being her sole legal heir is entitled for the whole property and the defendants have got no right to interfere in the suit property in any manner. On the other hand, the defendants alleged in their written statement that father of the plaintiff was murdered by one Yousaf and Manan in 1984, the revenge of which was taken by the grandfather of the defendants namely Gul Haider at the spot and due to the said murder, the defendants bore expenses worth Rs. 10,00,000/-. It is also alleged that brother of the plaintiff namely Abdul Raheem made firing at the Masjid on Friday and he was fined worth Rs. 100,000/- on the ground of making firing. That he was further fined Rs. 80,000/- for violating the sanctity of the holy Friday. That all the said fines were paid by the defendants on behalf of the family of the plaintiff and the plaintiff withdrew from ownership of the suit property in favour of the

BAKHT AZIZ
Senior Civil Judge/JM
Orakzai at Baber Mela

76
defendants in lieu of the payment of the above-mentioned amounts. The defendants have categorically stated in their written statement that they are ready to return the suit property to the plaintiff subject to payment of the above-mentioned amount.

During the course of evidence, the plaintiff produced one Muhammad Ayub as PW-01 who repeated the same story as alleged in the plaint. He has submitted affidavit to this effect which is already available on the case file as Ex.PW-1/1. PW-02, Umat Shah also repeated the same story and stated that after death of father, brother and mother of the plaintiff, the plaintiff has become sole owner of the suit property and the defendants have got no concern with the same. PW-03, Mehraban Khan also supported the stance of the plaintiff. The statements of all the PWs remained intact during cross-examination. The defendants also admitted the stance of the plaintiff by stating that they are ready to surrender the possession of the suit property in favour of the plaintiff subject to payment of the expenses worth Rs. 10,00,000/- bore by them after taking revenge of the murder of the father of the plaintiff and payment of fines worth Rs. 100,000/- and Rs. 80,000/- respectively paid by the defendants on account of making firing

9/12/22
BAKHT ZADAK
Senior Civil Judge/JM
Orakzai at Baber Mels

77

at the mosque and violating the sanctity of the holy Friday by the brother of the plaintiff. The defendants have not claimed any right over the suit property rather they demanded the return of the above-mentioned amount from the plaintiff. Now the defendants were duty bound to have proved the payment of the above-mentioned amount by producing evidence in this respect. The defendants have neither produced any evidence in respect of the payment of the alleged amount by them, nor they have produced any evidence to the effect that the plaintiff has withdrew from the ownership of the suit property in favour of the defendants.

During evidence, Muhammad Shahid appeared as DW-01 who also admitted that the suit property was the ownership of Syed Afzal, predecessor of the plaintiff. It is nowhere denied by the defendants that plaintiff is not the sole living legal heir of her father Syed Afzal, her brother deceased Abdul Raheem and her mother deceased Mst. Saidana. DW-02, Malak Mina Khan also categorically admitted during his cross-examination that plaintiff is the daughter of deceased Syed Afzal and deceased Mst. Saidana and sister of deceased Abdul Raheem. According to the law of inheritance after death of Syed Afzal (father of the plaintiff) his property devolved upon

Saker
BAKHT ZADAS
Senior Civil Judge/JM
Orakzai at Baber Mela

78

his living legal heirs i.e widow (mother of the plaintiff), son (brother of the plaintiff) and daughter (plaintiff herself). That after death of Abdul Raheem, his share in the suit property devolved upon his mother Mst. Saidana Bibi and the plaintiff (his sister Mst. Matao Jan). That after death of Mst. Saidana Bibi, the plaintiff being her sole legal heir became the sole owner of the suit property. The plaintiff has mentioned the details of the suit property in the site plan annexed with the plaint as Ex.PW-3/2 and she has become the sole owner of the suit property after death of her father, brother and mother. Issue No. 02 is decided in positive while issue No. 04 is also decided in favour of the plaintiff accordingly.

Issue No. 03:

It is alleged in the written statement that in 1984, father of the plaintiff was murdered by one Yousaf and Manan, the revenge of which was taken by one Gul Haider and Sarwar Khan at the spot and that due to the said enmity, the defendants have suffered loss of Rs. 10 lacs. It is also alleged that Abdul Abdul Raheem, brother of the plaintiff made firing at Masjid on the day of Juma due to which 02 persons got injured and fine of 180,000/- was imposed upon him according to tribal customs which was paid by the defendants. The in laws of the

Gul Haider
31.5.25
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

79

plaintiff refused to face the enmity of the plaintiff's family and the plaintiff withdrew from the ownership of the suit property in favour of the defendants. That later on the plaintiff demanded the ownership and possession of the suit property back from the defendants due to which controversy arose and several jirgas took place between the plaintiff and the defendants wherein the plaintiff and her family were declared to be on wrong.

During the course of evidence, the defendants have not produced any jirga member who could state that the family of the plaintiff has withdrawn from the property in favour of the defendants. There is no evidence on the whole case file to show that the defendants have paid any fine on behalf of the family of the plaintiff. DW-02 Malak Mina Khan has not uttered a single word about the fine and damages allegedly paid by the defendants. The stance of defendants regarding payment of fine on behalf of the family of the defendants and withdrawal from the ownership from the suit property by the plaintiff, finds no support from the evidence produced by them; therefore, the same is not proved on record. issue no. 03 is decided in negative.

31/5/25
BAKHT ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

Issue No. 01 & 05:

Both these issues are interlinked, hence, taken together for discussion.

As per my detailed discussion over issues no. 02 & 04, the plaintiff succeeded to prove that she is the only living legal heir of deceased Syed Afzal, Abdul Raheem and Mst. Saidana. This fact is also admitted by DW-02 during his cross-examination. Therefore, the plaintiff has got a cause of action and she is entitled to the decree as prayed for. Both these issues are decided in positive in favour of the plaintiff.

RELIEF:

As sequel to my above issue-wise findings, the plaintiff proved through cogent and confidence inspiring evidence that she is the daughter of deceased Syed Afzal and Mst. Saidana Bibi and sister of deceased Abdul Raheem and is entitled to the ownership of the suit property after death of her father, brother and mother. Decree to the extent of shari share in favour of the plaintiff is hereby granted.

Case file be consigned to the record room after its necessary completion and compilation.

Announced
31.05.2024

J. Zaid
31.5.24
(Bakht Zada)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of fifteen
(15) pages, each has been checked, corrected where necessary and
signed by me.

81

Bakht Zada 31.5.24
(Bakht Zada)
Senior Civil Judge,
Orakzai at (Baber Mela)