

71

**IN THE COURT OF SYED ABBAS BUKHARI**  
**CIVIL JUDGE - II, KALAYA**  
**ORAKZAI**

**Suit No. 162/1 of 2022**

**Date of Original Institution.....21.11.2022**

**Date of transfer to this court.....01.07.2022**

**Date of Decision of the suit.....13.06.2024**

**Mst. Saifoorah wife of Momin Gul, resident of Qom Mishti, Anjghalay, Tappa Mamizai, Tehsil Lower District Orakzai.**

.....Plaintiff

**Versus**

- 1. Hameed Khan son of Jaman Shah,**
- 2. Izzat Khan son of Masti Khan,**
- 3. Syed Akbar son Din Badshah,**
- 4. Mehraban Khan son of Gulbad Shah and**
- 5. Yaghbali Shah son of Awal Shah, all residents of Qom Mishti, Anjghalay, Tappa Mamizai Tehsil Lower, District Orakzai.....Defendants**

**SUIT FOR DECLARATION AND PERMANENT INJUNCTION**

**Counsel for plaintiff: Mr. Khurshid Alam Advocate**

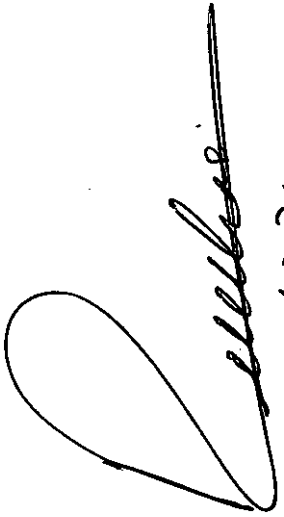
**Counsel for defendant: Mr. Sana Ullah Khan Advocate**

**JUDGMENT**

**13.06.2024**

Vide this judgment I intend to dispose of suit captioned above.

- 2. It is a suit from plaintiff against defendants for declaration and perpetual injunction to the effect that plaintiff is owner**

  
13-06-2024  
SYED ABBAS BUKHARI  
Civil Judge, JM-II  
Tehsil Courts Kalaya

of suit property known as انچاگھالے situated at Anjaghalay, Mishti, which was previously given to her as her dower by her father-in-law. Plaintiff further allege that she had given the suit property to defendants no. 01 & 02 for cultivation on temporary basis but now defendants are reluctant to hand over possession of suit property to plaintiff and claim their ownership over the same. In this respect defendants were time and again requested to return possession of suit property to plaintiff and further to refrain from claiming their ownership over the same but thereafter exercising delaying tactics finally refused to admit the stance of plaintiff, hence instant suit has been instituted.

STED ABAAS BUKHARI  
Civil Judge/JM-II  
Tehsil Courts Kalaya

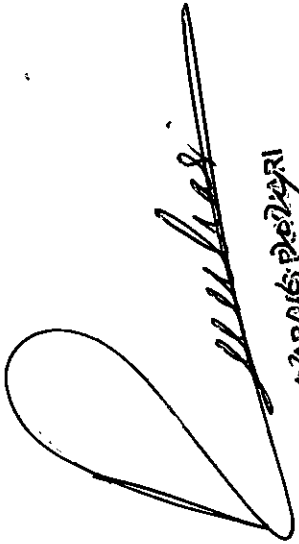
2. After institution of the suit, defendants were summoned and accordingly they appeared before the court and marked their attendance but subsequently defendants no. 02 to 05 failed to appear before the court and accordingly were placed and proceeded as ex-parte while defendant no. 01 submitted his written statement with legal and factual objections raised therein.
5. Out of controversies of the parties, as raised in their respective pleadings, this Court has framed the following issues on 14.04.2023.

**1. Whether the plaintiff has got a cause of action?**

2. Whether the suit property being dower of the plaintiff is her sole ownership and defendants have got no concern with the same rather they have forcefully and illegally grabbed the same? OPP
3. Whether the suit property is ownership and in possession of defendant no. 01 since the time of his predecessors and plaintiff has no concern with it? OPD
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as three witnesses and thereafter closed her evidence. Contrary to this, defendant no. 01 also produced three witnesses and thereafter closed his evidence with a note.

7. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiff opened the arguments and argued that that plaintiff is owner of suit property known as گنگو پٹے situated at Anjaghalay, Mishti, which was previously given to her as her dower by her father-in-law. He further argued that plaintiff had given the suit property to defendants no. 01 & 02 for cultivation on temporary basis but now defendants are reluctant to hand over possession of suit property to plaintiff and claim their ownership over the same. He further argued that the plaintiff succeeded to prove her stance through cogent, convincing and reliable evidence and further nothing in rebuttal is

  
 SYED BABAR PRADYARI  
 Civil Judge/JM-II  
 Tehsil Courts Katlaya

available on the record, hence prayed that the suit in hand may kindly be decreed in favor of plaintiff and against the defendants for the relief as prayed for.


8. Contrary to this learned counsel for the defendant no. 01 argued that plaintiff has got no cause of action. He further adduced that defendant no. 01 is owner in possession of suit property since the time of his predecessors. He further argued that plaintiff failed to prove her stance through cogent and convincing evidence. On the other hand, the defendant no. 01 succeeded to produce evidence in light and support of his stance previously alleged in his written statement. Hence, prayed that as plaintiff failed to prove her case, accordingly the suit in hand may kindly be dismissed.

9. Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

**ISSUE NO. 2:**

**Whether the suit property being dower of the plaintiff is her sole ownership and defendants have got no concern with the same rather they have forcefully and illegally grabbed the same? OPP**

Plaintiff has previously alleged in her plaint that she is owner of the suit property, as her father-in-law gave the same to her as her dower. To prove her stance plaintiff personally

  
 SYED ABAS FIKHARI  
 Civil Judge  
 Tehsil Courts Kalesha

appeared as PW-01 in the witness box and deposed in light and support of her previous stance as alleged in the plaint. During cross examination she stated that it is correct that she is not in possession of the field in the property of her father-in-law. She further stated that she has got no witness regarding handing over possession of the suit property to defendants no. 01 & 02 for cultivation. It has been thirty eight years of her marriage. Today she is not in possession of nikah nama. Self-stated that in those days there was no concept of nikah nama. She further stated that there is no house/home in Anjaghalay of her husband and her father-in-law. She has not visited her counsel at the time of drafting plaint rather she sent her husband. She further stated that it is not mentioned in her plaint that in which year possession of suit property was handed over to defendants. It is correct that after her marriage she spent all of her life in Shaho Khel District Hangu.


PW-02 was produced and examined as one Momin Gul s/o Hussain Gul, husband of plaintiff, who deposed in light and support of the stance of plaintiff previously alleged in the plaint. During cross examination he stated that his marriage was solemnized twenty five years ago. It is correct that plaintiff visited her counsel at the time of drafting the plaint. It is correct that nikah nama was scribed at the time of his marriage. Today same is

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not available with him. His mother died 25 years ago while his father passed away 30 years ago. One Jaman Shah is father of Hameed Khan (defendant no. 01). He had not seen Jaman Shah. It is correct that Jaman Shah had cultivated the suit property. Jaman Shah died about 50 years ago.

PW-03 was produced and examined as one Anwar Khalid s/o Hazrat Khalid, who deposed in light and support of the stance of plaintiff previously alleged in the plaint. He produced copy of his CNIC as Ex. PW-3/1. During cross examination he deposed that marriage of her mother-in-law was solemnized about 40 years ago. He residing in District Hangu and his fore-fathers were also settled at District Hangu. He belong to Qom Bangash and thus have got no relevancy with District Orakzai. Plaintiff would have 08/10 fields in Anjaghalay. It is correct that in his presence neither plaintiff has leased suit property to anyone nor he is witness of the same. His in-laws own 08/10 fields in Anjaghalay, out of which some fields are adjacent to each other while the remaining are situated at different places. Four fields have been leased to Yaghbali Shah. His mother-in-law has also resided at Anjghalay.

In light of the above evidence produced by plaintiff to prove the issue in hand, it has been noticed that although all the PWs have deposed in light and support of the stance of plaintiff in their respective examination in chief, however in their cross


  
SYED ABBAS BUKHARI  
/ (Civil & Criminal)  
Tehsil Courts Khatiya

examination PWs were contradicted in material particulars. A brief of their cross examination is narrated under;

As for as date/year of marriage of plaintiff concerned, PW-01 (plaintiff) had deposed in her cross examination that it has been 38 years of her marriage while on the other hand PW-02 (husband of plaintiff) stated in his cross examination that his marriage with plaintiff was solemnized 25 years ago. Similarly PW-03 stated in his cross examination that plaintiff's marriage took place about 40 years ago.

As for as nikah nama of plaintiff is concerned, plaintiff when appeared as PW-01 had deposed in her cross examination that at the time of her marriage there was no concept of scribing nikah nama while PW-02 stated that at the time of his marriage with the plaintiff nikah nama was scribed.

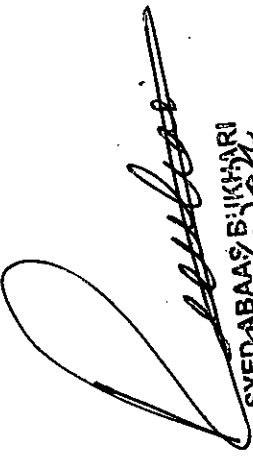
As for as declaring suit property as dower of plaintiff by her father-in-law is concerned, it is pertinent to mention here that plaintiff failed to produce any documentary or oral evidence in support of her stance and thus it has not been proved by the evidence produced by plaintiff that suit property was given to her as dower by her father-in-law at the time of her marriage. It is also worth mentioning here that no independent witness, who was present at the time of marriage of plaintiff, has been produced before this court by plaintiff.

  
SYED ABAAS BUKHARI  
Civil Courts  
Tehsil Courts Kalote

As for as death of father-in-law of plaintiff is concerned, it is pertinent to mention here that PW-02 (husband of plaintiff) has deposed in his cross examination that his marriage took place 25 years ago while his father (father-in-law of plaintiff) died 30 years ago i.e. father-in-law of plaintiff died 05 years prior the her marriage.

As for as the visit of plaintiff to her counsel for drafting plaint is concerned, it is pertinent to mention here that plaintiff had deposed in her cross examination as PW-01 that she never visited her counsel to draft plaint rather she sent her husband for the same while PW-02 (husband of plaintiff) had deposed in his cross examination that it is correct that plaintiff has visited her counsel for drafting plaint.

Furthermore, plaintiff is also admitted in her cross examination that no witness regarding handing over of suit property to defendants for cultivation on temporary basis is available with her. Moreover, plaintiff filed instant suit in respect of 01 field namely Nango Patay while PW-03, by deviating from the stance of plaintiff and making improvements, had deposed in his cross examination that plaintiff is owner of 08/10 fields and further out of said fields 04 fields have been leased to Yaghbali Shah (defendant no. 05).



SYED AABAZ BIKKHARI  
Civil Judge (Sd) /  
Tehsil Courts Kataya




In light of above discussion, on one hand plaintiff miserably failed to prove her stance through cogent, reliable and convincing evidence and on other hand such contradictions were brought on the record during cross examination of PWs, which make the credibility and character of witnesses doubtful. Accordingly issue in hand is hereby decided in negative against plaintiff and in favor of defendants.

**ISSUE NO. 03:**

**Whether the suit property is ownership in possession of defendant no. 01 since the time of his predecessors and plaintiff has no concern with it? OPD**

Defendant no. 01 had previously alleged in his written statement that the suit property is his ownership in possession since the time of his predecessor and plaintiff has no concern with it.

To prove his stance defendants produced one Saeed Gul s/o Hameed Khan (special power of attorney) as DW-01. He produced his special power of attorney which is Ex. DW-1/1. He further deposed on oath in light of the stance of defendant no. 01 previously alleged in the plaint. During cross examination he deposed that Momin Khan etc are not co-sharers in property with them. Their grandfather etc also never remained co-sharers with plaintiff or her husband. They inherited 06 fields from their grandfather.


  
**SYED A BAAS BUKHARI**  
 Civil Judge (S) / 1st  
 Tehsil Courts Katol

One Ajmir Gul s/o Janat Gul was produced and examined as DW-02. He produced copy of his CNIC which is Ex. DW-2/1. He deposed on oath in light and support of stance of defendant no. 01. During cross examination nothing contradictory regarding issue in hand has been brought on the record.

DW-03 was produced and examined as one Rashid Khan s/o Badshah Khan. He produced copy of his CNIC which is Ex. DW-3/1, who deposed in light and support of the stance of defendant no. 01 as well as issue in hand. During cross examination he deposed that no one has paid Rs. 50,000/- to him for conducting Jirga. He reside in Hangu.

Now in light of the above evidence produced by defendant no. 01 to prove the issue in hand, it has been noticed that all the DWs had supported the stance of defendants in their respective examination chief and in their cross examination nothing contradictory or in rebuttal has been brought on record by plaintiff.

In light of the above discussion as defendant no. 01 succeeded to prove the issue in hand through his cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination, hence issue in hand is

  
 SHEORABAAS BUKHARI  
 Civil Justice Officer  
 Tehsil Courts Kalaya

hereby decided in positive in favour of defendants and against plaintiff.

**ISSUE NO. 01**

**Whether the plaintiff has got a cause of action? OPP**

In wake of issue wise findings above, the plaintiff has got no cause of action, hence issue in hand is hereby decided in negative in favour of defendants and against plaintiff.

**ISSUE NO.04:**

**Whether plaintiff is entitled to the decree as prayed for? OPP**

In wake of my issue wise findings above, plaintiff is not entitled to the decree as prayed for, hence issue in hand is hereby decided in negative in favour of defendants and against plaintiff.

**Relief:**

As per issued wise findings above the instant suit of plaintiff is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

**Announced**  
13.06.2024

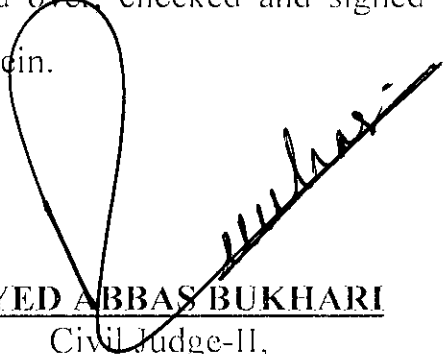
**SYED ABBAS BUKHARI**  
Civil Judge-II,  
Tehsil Courts, Kalaya Orakzai

(82)

C E R T I F I C A T E

Certified that this judgment of mine consist upon twelve (12) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 13.06.2024**

  
SYED ABBAS BUKHARI  
Civil Judge-II,  
Tehsil Courts, Kalaya Orakzai