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

Suit No. 72/1 neem of 2021

Date of Original Institution.....29.03.2021
Date of transfer to this court.....01.07.2022
Date of Decision of the suit.....27.06.2024

1. Aqal Shah,
2. Laiq Shah,
3. Muhammad Shah,
4. Zahir Shah
5. Noor Badshah sons of Guliman Shah,
6. Mst. Delshad Bibi
7. Mst. Chaman Bibi, both daughters of Guliman Shah residents of Qom Bezot, Tappa Meer Kuli Khel Muslim Abad Feroz Khel Tehsil Lower District Orakzai.
.....Plaintiffs

Versus

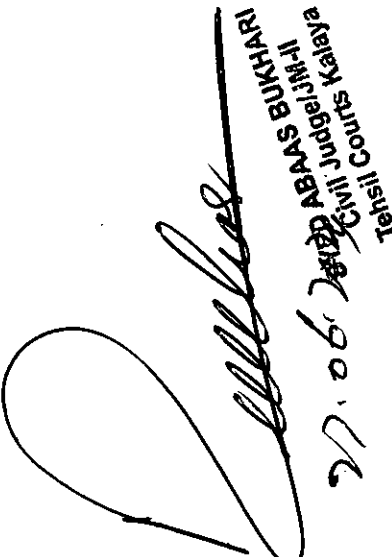
Umar Khan S/O Samand Ali, resident of Qom Bezot, Tappa Meer Kuli Khel, Muslim Abad Feroz Khel, Tehsil Lower, District Orakzai.Defendant

SUIT FOR DECLARATION AND PERMANENT
INJUNCTION

Counsel for plaintiffs: Malak Mudassir Saeed Advocate
Counsel for defendant: Mr. Sana Ullah Khan Advocate

JUDGMENT
27.06.2024

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



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2. It is a suit from plaintiffs against defendant for declaration and perpetual injunction to the effect that plaintiffs are owners in possession of the suit property, consisting upon 90 Marlas situated at Bezot, since the time of their fore-fathers and thus the defendant has got no right to claim his ownership over the suit property or to dispossess the plaintiffs.


Brief facts of the case as narrated in the plaint are that plaintiffs are owners in possession of suit property measuring 90 Marlas situated at Bezot since the time of their fore-fathers. Defendant has got no right to claim his possession or ownership over the suit property or to change its nature by raising construction. Defendant was time and again asked not to interfere with the suit property or claim his ownership over the same but he refused, hence the instant suit has been instituted.

4. After institution of the suit, the defendant was summoned and accordingly defendant appeared and 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 framed following issues on 27.04.2023.


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1. Whether the plaintiffs have got a cause of action?
2. Whether plaintiffs are owners in possession of suit property consisting upon 90 Marlas, fully detailed in the headnote of the plaint since the time of their fore-fathers? OPP
3. Whether the suit property is inherited property of defendant and is in his possession since the time of his father? OPD
4. Whether the plaintiffs are entitled to the decree as prayed for?
5. Relief.


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Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as three witnesses and thereafter closed their evidence. Contrary to this, defendants 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 plaintiffs opened the arguments and argued that plaintiffs are owners in possession of suit property consisting upon 90 Marlas situated at Bezot since the time of their fore-fathers. Defendant has got no right to claim his possession over the suit property or further to deny the stance of plaintiffs. He further argued that the plaintiffs succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favor of

plaintiffs and against the defendant for the relief as prayed for.


8. Contrary to this learned counsel for the defendant argued that plaintiffs have got no cause of action. He further adduced that defendant is owner in possession of the suit property since the time of his father. He further argued that plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand, the defendant succeeded to produce evidence in light and support of his stance previously alleged in his written statement. Hence, prayed that as plaintiffs failed to prove their 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 plaintiffs are owners in possession of suit property consisting upon 90 Marlas, fully detailed in the headnote of the plaint since the time of their fore-fathers? OPP

Plaintiffs have previously alleged in their plaint that they are owners in possession of the suit property, consisting upon 90 Marlas, since the time of their fore-fathers. To prove their stance plaintiffs produced the one Haji Noor Muhammad as PW-01 in


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 Civil Judge (S) Katara
 Tehsil Courts Katara

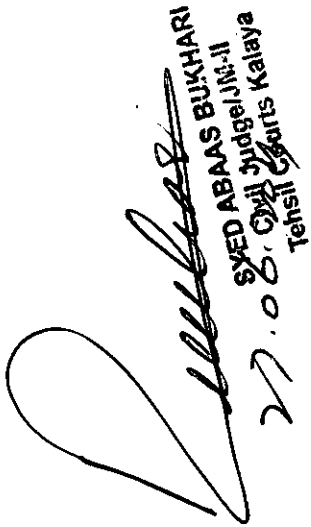
the witness box, who stated on oath that a Jirga between plaintiff and defendant was convened in his hujra, wherein 12 persons were appointed as arbitrators. Statements between both the parties i.e. plaintiffs and defendant were also recorded. Thereafter Omer khan refused from Jirga and said that he is not willing to settle the issue of property with plaintiffs. During cross examination he stated that one Sulaiman Shah shifted to Kohat about 100 years ago and never returned to Orakzai till his death. Suit property is in possession of defendant and he cultivate the same. Plaintiffs have no house in Bezot, Orakzai.

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 STEPHEN MAS D. KHAN
 Civil Judge (J.M-II)
 Courts Kataya
 27.06.2020

PW-02 was produced and examined as one Niaz Bar Khan s/o Said Muhammad, who deposed on oath that a Jirga was conducted between plaintiffs and defendant i.e. Aqal Shah and Omer Khan, in the hujra of Haji Noor Muhammad. He was member of the said Jirga. Jirga was convened on 06.12.2020. Defendant Omer Khan refused Jirga. During cross examination he stated that he is not in possession of the statements recorded in alleged Jirga. He is also not in possession of the deed of said alleged Jirga. Suit property is presently cultivated by Omer Khan and previously he also cultivated the same. It is correct that plaintiffs have no house in Bizot.


PW-03 was produced and examined as one Liaq Shah s/o Guli Man Shah, the attorney for plaintiffs, who deposed in light

and support of the stance of plaintiffs and further exhibited his special power of attorney which is Ex. PW-3/1. During cross examination he deposed that it is correct that he is not in knowledge of the boundaries of suit property. It is also correct that he has got no knowledge of the names of persons whose properties are adjacent to the suit property. It is correct that in the year 2013 defendant was cultivating the suit property. It is correct that they have restrained father of defendant from cultivating suit property through any Jirga or person. It is correct that since his birth till institution of instant suit they had not filed any application against defendant before any forum. Self-stated that as long as his father was alive, every matter regarding the suit property was his responsibility. Further self-stated that when his father used to reside in Orakzai, he handed over the suit property for cultivation to the defendant. It is also correct that he has no house in Orakzai. Last year defendant cultivated the bhang crop in the suit property. It is correct that defendant had been cultivated the bhang (cannabis) crop in the suit property. It is correct that previously the defendant also used to cultivate Bhang crop over the suit property.


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In light of the above evidence produced by plaintiffs to prove the issue in hand, it has been noticed that PW-01 and PW-02 by deviating from the previous stance of plaintiffs, by making

improvements have introduced new facts in their respective examinations in chief, as plaintiffs previously failed to mention any fact regarding Jirga between them and plaintiff in their plaint. Furthermore, plaintiffs also failed to mention the names of Jirga member, the venue and date of Jirga and any document scribed during the Jirga proceedings, in their plaint. Furthermore, PW-01 and PW-02 have admitted in their cross examination that suit property is in possession of defendant and is being cultivated by him. Moreover, PW-01 also deposed in his cross examination that grandfather of plaintiffs namely Suliman Shah shifted to Kohat 100 years ago and further he never returned to District Orakzai till his death. On the other hand all the PWs have also admitted in their respective cross examinations that plaintiffs have got no house at Bizot, which otherwise lead this court to suggest that plaintiffs have got no connection with District Orakzai. Furthermore, special attorney for the plaintiffs when appeared as PW-03 had deposed in his cross examination that in the 2013 suit property was being cultivated by defendant. He also admitted that they had not restrained defendant from cultivating the suit property. He also admitted that since his birth till institution of instant suit they had not approached any forum against defendant. It is also worth mentioning here that PW-03 by making improvements has introduced new facts in his cross examination


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 Jirga Judge/JM-II
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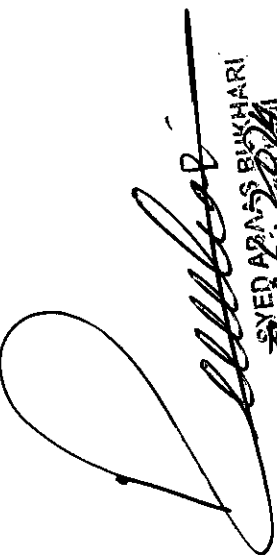
and had deposed that they had previously leased the suit property to defendant while plaintiffs previously failed to mention this fact in their plaint. Furthermore, plaintiffs also failed to produce any such independent witness in support of their stance that suit property is ownership of plaintiffs since the time of their forefathers.

In light of above discussion, on one hand plaintiffs miserably failed to prove their 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 plaintiffs and in favor of defendant.

ISSUE NO. 03

Whether the suit property is inherited property of defendant and is in his possession since the time of his father? OPD

Defendant had previously alleged in his written statement that the suit property is his inherited property and is his possession since the time of his father. To prove his stance defendant personally appeared as DW-01 in the witness box and deposed in light and support of his previous stance alleged in the written statement. During cross examination he stated that it is correct that presently plaintiffs have got no cultivable land. It is correct that



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the suit property mentioned in the plaint does not belong to plaintiffs rather same is his ownership.

One Niaz Ali s/o Nouroz Ali was produced and examined as DW-02, who deposed in light and support of the stance of defendant. During cross examination he deposed that it is correct that four fields were in possession of one Samand Ali Khan, who was father of defendant. It is correct that Sulaiman Shah has got no property.

DW-03 was produced and examined as one Sadi Khan s/o Khushal Khan, who deposed on oath in light and support of the stance of defendant. During cross examination he deposed that it is correct that plaintiffs have sold their lands and the suit property is ownership defendant.

Now in light of the above evidence produced by defendant to prove his stance as well as the issue in hand, it has been noticed that all the DWs have fully supported the stance of defendant in their respective examination in chief. On the other hand during cross examination nothing in rebuttal or contradictory has been brought on the record by the opposite party rather such questions were put to the witnesses, which were otherwise admission of of the stance of defendant by plaintiffs. During cross examination of DW-01 the admissions are reproduced for ready reference as *"it is correct that presently plaintiffs have got no cultivable land. It is*


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Civil Judge/JM-II
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correct that the suit property mentioned in the plaint does not belong to plaintiffs rather same is his ownership". Similarly during cross examination of DW-02 the admissions brought on the record are "it is correct that four fields were in possession of one Samand Ali Khan, who was father of defendant. It is correct that Sulaiman Shah has got no property" and admission in cross examination of DW-03 are "it is correct that plaintiffs have sold their lands and the suit property is ownership defendant"

In light of the above discussion as defendant 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 rather a series of admissions is witnessed in the cross examinations of DWs, hence issue in hand is hereby decided in positive in favour of defendant and against plaintiffs.

ISSUE NO. 01

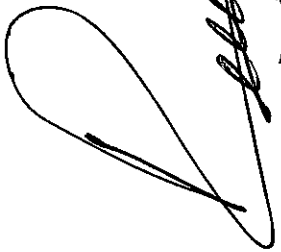
Whether the plaintiff have got a cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got no cause of action, hence the issue in hand is decided in negative in against plaintiffs and in favour of defendant.

ISSUE NO.04:

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

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S. JUDGE/JR-II
Tehsil Courts Kalaya

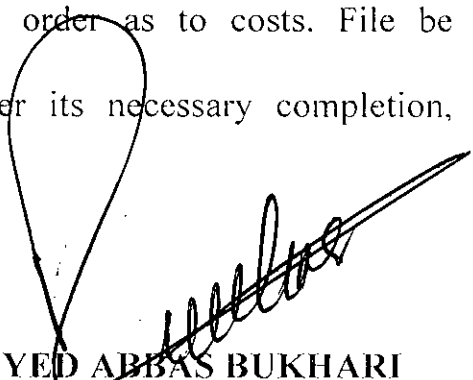


In wake of my issue wise findings above, plaintiffs are not entitled to the decree as prayed for, hence the issue in hand is decided in negative against plaintiffs and in favour of defendant.

Relief:

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

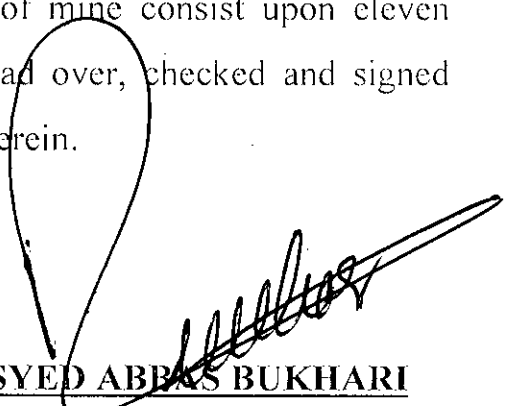
Announced
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SYED ABBAS BUKHARI
Civil Judge-II,
Tehsil Courts, Kalaya Orakzai

C E R T I F I C A T E

Certified that this judgment of mine consist upon eleven (11) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 27.06.2024


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