

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 3/13 OF 2024
DATE OF INSTITUTION : 01.04.2024
DATE OF DECISION : 24.06.2024

1. SHER MUHAMMAD S/O ISMAIL SHAH
 2. MUHAMMAD JANAN S/O ABDUL KHANAN
 3. WALI KHAN S/O MUHAMMAD KARIM
 4. KARIM DIN S/O ISMAIL KHAN
 5. ABDUL WAHAB S/O SULAIMAN SHAH
 6. SWABIDAR SHAH S/O SAID MIR SHAH
- ALL R/O CASTE ALI KHEL, GHOTAK ISA KHEL, TEHSIL UPPER
DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. SAID HAKIM S/O SHER AKBAR
 2. MUFTI AFZAL S/O HAJI JALANDAR KHAN
- R/O KHADIZAI, TEHSIL UPPER DISTRICT ORAKZAI

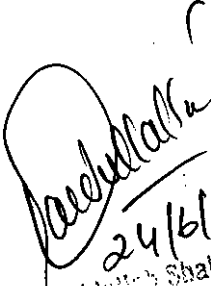
..... (RESPONDENTS).

Present: Javid Muhammad Panji, Zahid Bashir and Insaf Ali Advocates for
appellants.
: Malak Muhammad Farooq and Hussain Uddin Advocates for
respondents

JUDGEMENT
24.06.2024

Impugned herein is the judgment/decree dated
07.03.2024 of learned Civil Judge-I, Orakzai vide which the
suit of the respondents/plaintiffs has been decreed as prayed
for.

- (2). In a suit before the trial court, respondents/plaintiffs
(hereinafter referred to as plaintiffs) claimed declaration,
perpetual and mandatory injunction with regard to the suit
property of Moza Khadizai consisting of forest, streams,
mountain etc. as detailed in the headnote of the plaint while
the appellants/defendants (hereinafter referred to as

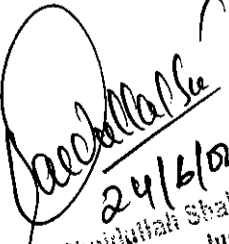

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defendants), being residents of Ghotak Ali Khel, having got no concern with the suit property, are bent upon making interference in the suit property by cutting trees, using the spring water and altering the nature of the suit property. The defendants were summoned who appeared before the trial court and contested the suit by submission of written statement wherein they have raised various legal and factual grounds. The pleadings of the parties were culminated into the following issues;

- I. Whether plaintiffs have got cause of action?*
- II. Whether the plaintiffs are estopped to sue?*
- III. Whether suit of plaintiffs is time barred?*
- IV. Whether the suit property is the ownership in possession of the plaintiffs since long and the defendants have got nothing to do with the same?*
- V. Whether plaintiffs are entitled to the decree as prayed for?*
- VI. Relief.*

(3). Parties were given opportunities to produce their evidence. Accordingly, the plaintiffs and the defendants adduced sixteen (16) and three (03) witnesses respectively, in support of their respective contentions.

(4). The learned trial court, after hearing the arguments, decreed the suit of the plaintiffs vide impugned judgment/decreed dated 07.03.2024. The defendants, feeling


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themselves aggrieved of impugned judgment/decree, filed the instant appeal.

- (5). I heard arguments and perused the record.
- (6). Perusal of the case file reveals that the plaintiffs, as per averments of the plaint coupled with the statement of PW-1, in a representative suit claimed themselves as owners in possession of the suit property including Nika Chashma devolved upon them from their forefathers. As per statement of PW-13/Muhammad Raheem, the parties were also grabbed in a dispute over a Madrassah situated within the boundary of caste Khadizai, in the year 1971 which was decided in favour of the plaintiffs vide jirga verdict 10.08.1971 and the defendants were restrained from interference. This fact has been confirmed by DW-2 in his cross examination. Moreover, PW-1 in his statement also stated that in the year 1981 they, being caste of Khadizai, had laid a water pipeline on their own whereafter a government scheme was approved in 2003-04 and an agreement was signed between them and a government department. To prove this stance, the plaintiffs produced two government officials, namely Zulfiqar Ali/PW-2 Forester District Orakzai and Shahid Noor/PW-3, Divisional Forester Officer, Orakzai who exhibited a document Ex. PW 2/1 testifying the agreement signed between their department and Said Hakeem (respondent no.


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1). The plaintiffs also relied on the testimonies of Khwagmin Khan/PW-5 whose father had purchased water of Nika Chashma from Niazbat Khan of the caste of the plaintiffs. This fact has also been confirmed by PW-6 affirming the document produced by PW-5 as Ex. PW 5/1. The stance of the plaintiffs is also acknowledged by Taj Muhammad/PW-7 regarding the ownership of the suit property as his father had purchased water from caste Khadizai vide iqrar nama Ex. PW 7/1. It is also evident from the record that during pendency of a suit before the court of the then Assistant Political Agent, Orakzai, two different jirgas involving the same parties and the disputed property were held; one of them was decided in favour of the plaintiffs while the other was decided in defendants' favour. Izat Khan and Noshewan, the jirga members convened by the then APA, Orakzai were also produced before the trial as PW-9 and PW-10 exhibiting the opinion of the jirga as Ex. PW 9/1.

To counter the stance of the plaintiffs, defendant no. 1 appeared before the trial court as DW-3 who blatantly denied the pleadings of the plaintiffs claiming the disputed property to be their ancestral property. They also produced Khwaja Gul and Mehnat Khan as DW-1 and DW-2 but none of them has produced any documentary evidence which could strengthen the case of the defendants.

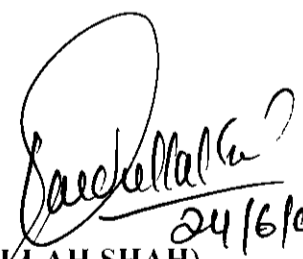
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In absence of any revenue record, it is the statements of witnesses which could prove the pleadings of either party. In the instant case, the evidence produced by the plaintiffs are consistent regarding their right of possession over the suit property as their statements have not been shattered in any regard.

- (7). In these circumstances, it is held that the judgment rendered by the learned trial court is based upon proper appreciation of evidence adduced by the parties and has rightly decreed the suit of the plaintiffs. The impugned judgement/decreed dated 07.03.2024 is unexceptional and not open to any interference by this court. Accordingly, the appeal in hand resultantly stands dismissed being meritless with no order as to cost.

Judgment announced. File of this court be consigned to Record Room after its necessary completion and compilation while record be returned.

Dated: 24.06.2024

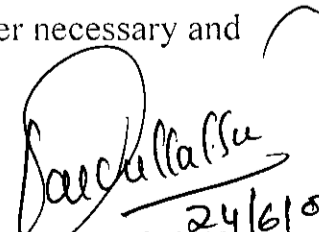

(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 24.06.2024


(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

