

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

Case # = 01/133 OF 2023.
Date of Institution = 01.11.2023.
Date of Decision = 25.07.2024.

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1. *Hafiz Naimat Ullah S/O Syed Noor Shah,*
 2. *Noor Saleem S/O Gohar Shah both residents of Qaum Mamozai, Tappa Abdur Rahim Khel, Upper Orakzai*

.....(Complainant)

Versus

1. *Muhammad Tayyab S/O Abdul Ghaffar,*
2. *Muhammad Rauf S/O Lal Mir Shah,*
3. *Ghazi Shah S/O Ghani Shah, and*
4. *Sifat Shah S/O Noor Badshah all residents of Qaum Mamozai, Tappa Abdur Rahim Khel, Sama Bazar, Upper Orakzai.*
5. *SHO, PS Ghiljo, District Orakzai*

.....(Respondents)

COMPLAINT U/S 133 Cr. P.C.

JUDGEMENT

25.07.2024

Through this judgement, I am going to decide the complainant U/S 133 Cr. PC in hand filed by complainant Hafiz Naimat Ullah and one other against the respondents Muhammad Tayyab and four others.

Brief facts as per contents of complaint U/S 133 Cr. PC are that complainant Hafiz Naimat Ullah and one other have brought the instant complainant against respondents Muhammad Tayyab and four others.

The complainants have alleged that their house is situated in between the houses of respondent No. 1 & 2 and an agreement has also taken place between them in respect of thoroughfare on 16.03.2010. It is

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further alleged that few months back, the respondents have raised wall in front of the main gate of the complainants and their access to the main road has become impossible and the pathway has been completely closed. That in presence of SHO, a jirga was also convened, but the respondents are wicked people and are bent upon fighting and vacating the house of the complainants and to compel them to sell the house to them. They prayed for removal of the wall by issuing order to respondent No. 5.

Complaint was filed on 31.10.2023. Statement of complainants was recorded U/S 200 Cr.PC. SHO concerned was directed to hold inquiry and submit report on date fixed. Inquiry report was submitted by SHO concerned. Show cause notice was issued to respondents, who appeared before the court and submitted reply wherein it is categorically mentioned that the dispute between the parties does not fall under the domain of Section 133 Cr. PC. That the pathway is not a public thoroughfare. That the complainants are neither residing in the house nor they are using the pathway. That the wall is 60 years old.

The complainant was asked to produce evidence in support of his claim, who produced as many as six PWs, while statement of inquiry officer/SHO PS Ghiljo was recorded as CW-01. The gist of their evidence is as under;

PW-01, is the statement of complainant Hafiz Naimat Ullah. He produced the compensation survey documents in respect of his house which are Ex. PW-1/1. He alleged that the respondents have closed the pathway to his house. That several jirgas were convened in this

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connection and Iqrar Nama dated 01.05.2005 was executed between the parties which is Ex. PW-1/2. His CNIC is Ex. PW-1/3 and partition deed is Ex. PW-1/4.

PW-02 is the statement of Noor Bat Khan S/O Izat Khan. He stated that he was a jirga member between the complainant and respondent No. 1. He stated that the pathway to the house of the complainant is a joint property of the parties.

PW-03 is the statement of Ayub Khan S/O Abdul Jabbar. He also repeated the same story as alleged by PW-02.

PW-04 is the statement of Jhangir Shah. He stated that the pathway is the joint property of the parties.

PW-05 is the statement of Hafiz Khalil Ur Rehman. He also stated that the pathway to the house of the complainant is a joint property.

PW-06, Moulana Noor Saleem also alleged that the pathway in question is a joint property since their forefathers.

CW-01, is the statement of Ibrahim Khan, SHO, PS Ghiljo. He exhibited the site plan of the pathway prepared by him on 13.11.2023 which is Ex. CW-1/1. He stated that the pathway to the house of the complainant has been closed by Muhammad Rauf by constructing the wall in the same. He stated that the pathway is the ownership of the respondent. It is further stated that complainant has received compensation amount on the basis of survey and that respondent will not open the pathway until the amount is paid to him.

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After closing of evidence, arguments on the complaint heard and available record perused. The perusal of record shows that PW-01 has categorically stated that the issue is pertaining to the year 2005 and several jirgas have taken place between the parties wherein Iqar Nama dated 01.05.2005 duly signed by the parties was executed. PW-01 has admitted that he is residing in Peshawar for the last 15 years and used to visit their village from time to time at occasion of wedding or death of relatives. He also admitted that he also owns another house at the road side. He admitted that there is no other house of any person on the disputed thoroughfare except him. PW-02, PW-03, PW-04 and PW-05 have categorically stated that the pathway leading to the house of the complainant is a joint property, while CW-01, SHO has stated that there is dispute between the parties in respect of the compensation amount received by the complainant on the basis of survey.

All the above statements clearly shows that the complainant and respondents are closed relatives and there is no other house situated on the disputed pathway except that of the complainant which he has admitted during his cross examination. So, it is clear from the statements of PWs that the pathway in dispute is not a public thoroughfare. It is also evident from the statements of the PWs and CW-01 that the dispute is old one and jirgas have taken place between the parties in the year 2005. The house in question to which the pathway in dispute is leading is laying vacant for the last so many years and the dispute between the parties clearly seems to be one of civil nature and does not fall within the domain of Section 133 Cr. PC. It is

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not mentioned in the complaint that when and how the respondents have closed the pathway and whether the complainants at that time had reported the matter to police or any court of law for restraining the respondents. Section 133 Cr. PC deals with the public nuisance and the same is attracted only in case of emergency and eminent danger. The idea behind the section is that the danger complained of should be such that if Magistrate does not take action under this section and directs the public to have recourse to the ordinary court of law, irreparable damage would be done. The section confers extraordinary powers which are meant to be exercised under extraordinary circumstances where recourse to ordinary law is not possible owing to the urgency of the matter. The Magistrates are not expected to use the power under this section against person who can easily be prosecuted under the ordinary law. The very exceptional jurisdiction given in this chapter should be exercised with all possible fairness and reasonable precaution.

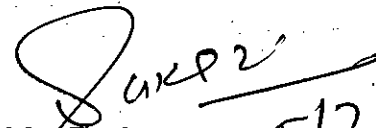
Provision under this section are not intended to settle a private dispute between two members of the public. They are not originated by the filing of a complaint or something of that kind. They are in fact intended to protect the public as a whole against inconvenience. As stated above, the dispute involved in the instant case is between the two families and has been coming out for the last so many years and the same involves no urgency. The dispute is one of private nature, therefore, the instant complaint being devoid of merits is hereby dismissed.

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

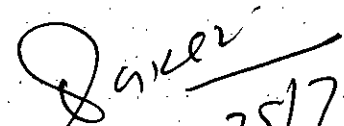
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CERTIFICATE

It is certified that this judgment consists of 06 pages. Each page has
been dictated, read, corrected and signed by me.


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