

IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI

Case #.....182/1 of 2021.
Date of Institution.....03.11.2021.
Date of Decision.....23.09.2024.

Fayaz Khan S/O Ali Majan R/O Qaum Mani Khel, Tappa Sabzi Khel Satar Saam, Orakzai.....**Plaintiff**

Versus

1. Rasheed Ali S/O Nazeer Ali
2. Yasar Ali S/O Sardar Ali both R/O Qaum Mani Khel, Tappa Mast Ali Khel, Kalaya, Lower Orakzai.....**Defendants.**

SUIT FOR RECOVERY OF RS. 300,000/-

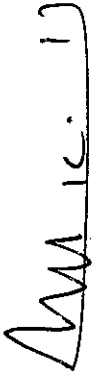
JUDGMENT
23.09.2024

Through this judgment, I am going to decide the suit in hand filed by plaintiff Fayaz Khan against the defendants Rasheed Ali and Yasar Ali for recovery of Rs: 300,000/-.

Brief facts of the case as per averments of plaintiff are that, plaintiff has filed the instant suit for recovery of Rs. 300,000/- (Three lac) against defendants alleging that plaintiff is the permanent resident of district Orakzai and hails from Qaum Mani Khel, Tappa Sabzi Khel, Lower Orakzai. He and defendants owned and possessed a joint coal mine known as Fayaz Ali/Sheru group at Dawali, Lower Orakzai. Plaintiff was shareholder to the extent of 1/16. He and defendants sold the said coal mine to one Haji Haq Meer etc in lieu of Rs. 201,00,000/- (two crore and one lac). He received his share of 1/16 out of the sale consideration. Later on, he came to know that defendant No 2 has

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

23/09/2024



66


entered into a secret agreement with Haji Haq Meer group and defendant No. 2 has not sold his share to the said group. Defendant No. 2 remained as partner/co-sharer in the said coal mine due to which a dispute arose and for the resolution of the dispute, a jirga was held as a result of which Sheru group paid Rs. 500,000/- while defendant No. 2 paid only Rs. 200,000/- (two lac) out of Rs. 500,000/-. Defendant No. 1 stood guarantor of defendant No. 2 for the payment of the said amount in light of the jirga decision. Defendants were asked time and again to pay the remaining amount of Rs. 300,000/-but in vain, hence, the present suit.

Defendants were summoned; who appeared before the court and contested the suit by filing written statement. From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

Issues:

1. Whether plaintiff has got cause of action? OPP
2. Whether suit of plaintiff is within time? OPP
3. Whether plaintiff is entitled to recovery of Rs. 300,000/- (three lac) as a result of the jirga decision held for the resolution of dispute between the parties? OPP
4. Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD


23/09/24

5. Whether an amount of 600,000/- (Six lac) is to be paid by plaintiff to defendants as royalty of the Dawali coal mine? OPD
6. Whether plaintiff is estopped to sue? OPD
7. Whether the plaintiff is entitled to decree as prayed for? OPP
8. Relief?

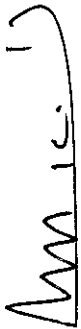
Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, plaintiff produced 03 witnesses while defendants failed to produce their evidence despite repeated opportunities, notice under Order XVII Rule 3 CPC was given to defendants and defendants failed to produce their evidence, resultantly, right of defendants to produce evidence was struck off.

During course of recording evidence, plaintiff in support of his claim and contention produced 03 witnesses.

Syed Raiz Hussain and Ali Samand, appeared and deposed as PW-01 & PW-02 respectively. They fully supported the claim of plaintiff. Copies of their CNICs are Ex-PW-1/1 & Ex.PW-2/1. Plaintiff Fayaz Ali, himself appeared and deposed as PW-03. He reiterated the averments of plaint. He produced copy of jirga decision dated 24.12.2019 which is Ex.PW-3/1. Copy of his CNIC is Ex.PW-3/2. He lastly requested for decree of suit in his favor against defendants as prayed for.

Issue No. 02:

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai



23/09/2024

68

Whether suit of plaintiff is within time? OPP

Burden of proof regarding this issue was on plaintiff. Per averments of plaint, there was a dispute between the parties which was referred to jirga as per culture, customs and traditions of the locality and the jirga members delivered their verdict as per which defendant No. 2 was bound to pay Rs. 500,000/- to plaintiff. Defendant No. 1 stood guarantor for the payment of the said amount. As per Ex.PW-3/1, the jirga decision was delivered on 24.12.2019. Defendants refused to pay the suit amount to plaintiff, resultantly, suit in hand was filed on 03.11.2021. Hence, suit of plaintiff is held to be within time. Even otherwise, all Federal and Provincial Laws stood extended to the Newly Merged Districts in the year 2019. Hence, issue No.2 is decided in positive.

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

Issue No 03.

Whether plaintiff is entitled to recovery of Rs. 300,000/- as a result of the jirga decision held for the resolution of dispute between the parties? OPP

Burden of proof regarding this issue was on plaintiff. As per averments of plaint, there was a dispute between the parties which was referred to jirga as per culture, customs and traditions of the locality and the jirga members delivered their verdict according to which defendant No. 2 was bound to pay Rs. 500,000/- to plaintiff. Defendant No. 1 stood guarantor for the payment of the said amount. Defendant No. 2

AM 16.1
23/09/24

paid Rs. 200,000/- to plaintiff and the remaining amount of Rs. 300,000/- is still outstanding. Defendants, in the written statement have not specifically denied the claim of plaintiff rather it is averred that the said amount has been withhold by them due to non-payment of royalty amount of Rs. 600,000/- which the plaintiff is bound to pay to defendants. Plaintiff produced cogent, convincing and reliable documentary evidence in shape of Ex.PW-3/1. Out of the jirga members, PW-01 Syed Riaz Hussain and PW-02 Ali Samand fully supported the claim of plaintiff. Defendants failed to bring on record contradictions in the statements of PWs despite lengthy cross examination. Oral evidence produced by plaintiff is also fully supportive to the averments of plaint. There is nothing in rebuttal as defendants failed to produce their evidence. Hence, issue No. 03 is decided in positive in favor of plaintiff and against the defendants.

Issue No. 04, 05 and 06

Burdon of proof regarding these issues was on defendants, however, defendants failed to produce their evidence despite repeated opportunities and their right to produce evidence was struck of after receiving notice U/O XVII Rule 3 CPC, hence, all these issues are decided against the defendants.

Issue No. 1 & 7.

In the light of foregoing discussion, it is held that plaintiff has proved his stance through cogent, convincing and reliable

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

Amir
23/09/024

70

documentary and oral evidence; therefore, he has got cause of action and is entitled to the decree as prayed for in his favour against the defendants. Both these issues are decided in positive in favour of plaintiff.

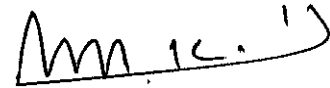
Relief?

Crux of my issue wise discussion is that suit of the plaintiff is hereby decreed in his favour against the defendants as prayed for. Parties have to bear costs of their proceedings because none of the parties have specifically proved the costs incurred on the case.

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

ANNOUNCED

23.09.2024



Zahir Khan

Civil Judge-I, Kalaya, Orakzai