

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.*

**BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI AT BABER MELA**

CIVIL APPEAL NO. : 03/13 OF 2024  
DATE OF ORIGINAL INSTITUTION : 12.07.2024  
DATE OF PRESENT INSTITUTION : 10.10.2024  
DATE OF DECISION : 17.10.2024

SAIFOORA W/O MOMIN GUL, R/O ANJGHALI, QAUM MISHTI, TAPPA MAMIZI, DISTRICT ORAKZAI PRESENTLY RESIDING AT DISTRICT HANGU

.....(APPELLANT)

-VERSUS-

1. HAMEED KHAN S/O JEHAN SHAH,
2. IZAT KHAN S/O JAMAN SHAH.
3. SYED AKBAR S/O DIN BADSHAH
4. MEHRBAN KHAN S/O GUL BADSHAH AND
5. YAGHBALI SHAH ALL RESIDENTS OF QAUM MISHTI, TAPPA MAMIZI, LOWER ORAKZAI.

..... (RESPONDENTS)

**Present:** Khursheed Alam Advocate for appellat.  
: Sana Ullah Khan Advocate for respondents No. 1 & 2

**JUDGMENT**

Impugned herein is order/judgement dated 13.06.2024 of learned Civil Judge-II, Orakzai vide which suit of the appellants/plaintiffs has been dismissed.

(2). Facts of the case are that; appellant/plaintiff Mst. Saifoora w/o Momeen Gul r/o Caste Mishti, Anjaghalay, Tapa Mamizai, Tehsil lower, District Orakzai, instituted suit for the declaration and permanent injunctions to the effect that she is owner of the suit property known as 'Nango Patey' (ننگو) situated at Anjaghalay, Mishti, which was given to her by her father-in-law as dower. That the suit property was given to respondents/defendants No. 1 & 2 for cultivation, but later on they claimed to be the owners of the suit property and refused to hand over possession of the suit property to the appellant/plaintiff and hence the suit was instituted.

*Sana Ullah Khan*  
17.10.24.  
BAKHT ZADA  
Addl. District & Sessions Judge-I  
Orakzai at Hangu

The respondents/defendants were summoned, defendant No. 1 appeared before the court, while defendants No. 2 to 5 were placed and proceeded ex-parte. Defendant No. 1 submitted his written statement and the divergent pleadings of the parties were reduced to the following issues by the learned trial court;

**ISSUES:**

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. 1 since the time of his predecessors and plaintiff has got no concern with it? OPD*
4. *Whether the plaintiff is entitled to the decree as prayed for?*
5. *Relief?*

Parties were provided with opportunity to produce their evidence. Accordingly, appellant/plaintiff produced as many as 03 witnesses, including the statement of appellant/plaintiff herself who deposed as PW-1. Momeen Gul, husband of the plaintiff deposed as PW-2 while Anwar Khalid, son-in-law of the plaintiff appeared as PW-3, in support of the claim of the appellant/plaintiff. While respondents/defendants produced and recorded the statements of one Saeed Gul as DW-01, who is attorney of the respondents/defendants. DW-02 is the statement of Ajmir Gul S/O Janat Gul, while DW-03 is the statement of Rasheed Khan S/O Badshah Khan.

- (3). After conclusion of trial, the learned trial court heard arguments of the learned counsel for the parties and dismissed the suit of the appellant/plaintiff. The plaintiff/appellant, being aggrieved of the impugned judgement/decree dated 13.06.2024 have filed the instant appeal.

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17.10.24  
BAKHT ZADA  
Addl. District & Sessions Judge-1  
Orakzai at Haragu

(4). I heard arguments and perused the record.

(5). It is the case of the appellant/plaintiff that the suit property known as "Nango Patay" was given to her as dower by her father-in-law, which was given to respondents/defendants No. 1 & 2 for cultivation, but later on, they claimed to be the owners of the suit property and refused to return possession of the same to the appellant/plaintiff. The appellant/plaintiff was burdened with the onus to prove that suit property was ownership of her father-in-law at the time of her marriage and the same was given to her by her father-in-law as dower. But the appellant/plaintiff instead of discharging her burden to produce the relevant witnesses regarding the ownership and dower of the suit property, has recorded statement of her son-in-law, Anwar Khalid, besides herself and her husband. PW3/Anwar Khalid is only forty-three years (43) old according to his CNIC placed on file Ex. PW3/1, while appellant/plaintiff in her statement as PW/1 has stated that her marriage took place about 38 years back, meaning thereby that PW-3/Anwar Khalid was only five years old at the time of marriage of his mother-in-law PW-1; therefore, his statement regarding Nikah and dower of appellant/plaintiff is irrelevant and cannot be taken into consideration. There are contradictions between the statements of appellant/plaintiff (PW-1) and her husband, Momeen Gul (PW-2). PW-2 has admitted during cross-examination that written Nikah Nama was prepared at the time of their marriage, but the statement of appellant/plaintiff not only in this respect but on many scores is contradictory to her husband. She has admitted during her own statement as PW-01 that she has got no evidence in respect of handing over possession of the suit property to respondents/defendants No. 1 & 2 for cultivation. The plaintiff of the appellant/plaintiff is silent about execution of any Nikah Nama/dower deed and the names of the witnesses in whose presence the suit property was given to her as dower by her father-in-law. The appellant/plaintiff has neither mentioned the date of handing over possession to the respondents/defendants, nor she has

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17-10-24  
BAKHT ZADA  
Distt. & Sessions Judge  
Orakzai

produced any evidence regarding "Ijara" paid to her by the respondents/defendants in respect of the suit property. The most important aspect of the present appeal is that counsel for the appellant/plaintiff has not raised any question regarding wrong assessment of evidence by the trial court or illegality of any specific findings in the impugned judgement dated 13.06.2024 of the learned Trial Court, rather he has prayed for providing opportunity for producing additional evidence. The details of additional evidence intended to be produced are neither mentioned in the grounds and prayer of appeal, nor are the names of the witnesses mentioned in the application for additional evidence submitted by the counsel for the appellant/plaintiff with the instant appeal.

(6). Counsel for the appellant/plaintiff has also submitted a separate application with his appeal for producing additional evidence. He has also submitted an unregistered and unattested copy of Iqrar Nama/dower deed which is written upon plain paper, but the same has not been mentioned in the averments of the said application. Reply to the said application submitted by the counsel for the respondent/defendant No. 1 & 2 and arguments of both the counsel for the parties were heard.

(7). It is mentioned in the application that brother (Janaf Khan) of the appellant/plaintiff has returned from Dubai, who was present at the time of Nikah, but the alleged dower deed submitted by the counsel for the appellant/plaintiff lacks name of the brother of appellant/plaintiff as marginal witness of the deed. Further, details regarding availability of witnesses of Nikah/dower and their names are not mentioned in the application. There is no mention of the alleged dower deed in the plaint of the appellant/plaintiff and subsequently in the evidence produced by her. In these circumstances even if the application for additional evidence is accepted and the appellant/plaintiff record the statements of some random people, the same will not be able to rescue her in proving her stance because it is admitted by the appellant/plaintiff before the

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17.10.24  
BAKHT ZADA  
Addl. District & Sessions Judge-1,  
Orakzai at Hangu

court today that all the marginal witnesses of the alleged dower deed are dead. In these circumstances, the application being devoid of merits is dismissed.

(8). In view of what has been discussed above, it has become crystal clear that learned Trial Court has rightly dismissed the suit of the appellant/plaintiff which warrants no interference from this court. The instant appeal against the impugned judgement dated 13.06.2024 and application for additional evidence being devoid of merits are hereby dismissed. No order as to cost.

(9). Case file be consigned to the record room after its necessary completion and compilation while record be returned back to the quarter concerned.

Announced  
17.10.2024

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17.10.24

(Bakht Zada)  
Addl: District Judge-I, 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: 17.10.2024

*Bakht Zada*  
17.10.24

(Bakht Zada)  
Addl: District Judge-I, Orakzai  
at Baber Mela