

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

CIVIL APPEAL NO. : 4/13 OF 2024  
DATE OF INSTITUTION : 10.07.2024  
DATE OF DECISION : 23.10.2024

1. AQAL SHAH,
  2. LAIQ SHAH,
  3. MUHAMMAD SHAH,
  4. ZAHIR SHAH,
  5. NOOR BADSHAH,
  6. MST. DILSHAD BIBI,
  7. MST. CHAMAN BIBI
- ALL CHILDREN OF GULIMAN SHAH, R/O CASTE BEZOT,  
TAPA FEROUZ KHEL, TEHSIL LOWER DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

UMAR KHAN S/O SAMAND ALI, R/O CASTE BEZOT, TAPA  
FEROUZ KHEL, TEHSIL LOWER DISTRICT ORAKZAI

..... (RESPONDENT)

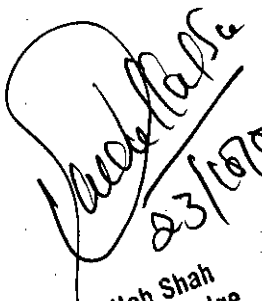
**Present** : Malak Mudassir Advocate, the counsel for appellants  
: Sana Ullah Khan Advocate, the counsel for respondent

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**JUDGEMENT**  
23.10.2024

Impugned herein is the judgment/decreed dated 27.06.2024 of learned Civil Judge-II, Tehsil Kalaya vide which the suit of the appellants/plaintiffs has been dismissed.

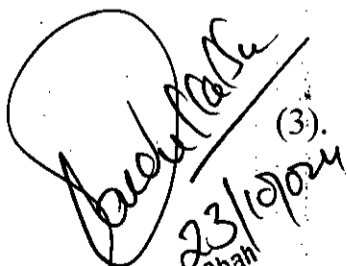
- (2). In a suit before the trial court, the appellants/plaintiffs (hereinafter referred to as plaintiffs) sought declaration and perpetual injunctions to the effect that they, since their forefathers, are owners in possession of the suit property consisting upon 90 Marlas, surrounded by the property of Ali Muhammad and a government school to the east, the property of Syed Jamal to the west, the property of Ali

  
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Muhammad to the north and the property of Khano Pate to the south as detailed in the headnote of the plaint while the respondent/defendant (hereinafter referred to as defendant), having got no concern with the suit property, are bent upon making interference in the suit property by claiming its ownership, making construction on it and altering its nature. The defendant was summoned who appeared before the trial court and contested the suit by submitting a written statement wherein he has raised various legal and factual grounds. The pleadings of the parties were culminated into the following issues;

- I. *Whether the plaintiffs have got a cause of action?*
- II. *Whether the 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 forefathers?*
- III. *Whether the suit property is inherited property of defendant and is in his possession since the time of his father?*
- IV. *Whether the plaintiffs are entitled to the decree as prayed for?*
- V. *Relief.*


Parties were given opportunities to produce their evidence. Accordingly, each of the party, in support of their respective contentions, had produced three (03) witnesses.

  
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(4). The learned trial court, after hearing the arguments, dismissed the suit of the plaintiffs vide impugned judgment/decree dated 27.06.2024. The defendant, feeling himself 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 claimed declaration affirming their ownership of the aforementioned property and perpetual injunction restraining the defendants from interfering with their possession. The onus of proof and the requirements for establishing entitlement to a declaration and injunction lies upon the shoulders of the plaintiffs who relied upon a jirga convened in the hujra of Haji Noor Muhammad/PW-1 and a jirga member, namely Niaz Bar Khan/PW-2 in whose presence the jirga was held. Though both witnesses have acknowledged the jirga held between the parties on 06.12.2020 but in their cross examination they also affirmed that the suit property is in possession of the defendant who cultivates the same. Besides this, as per averments of the plaint, the plaintiffs have not mentioned any jirga conducted between the parties. Moreover, the plaint describes the properties surrounding the plaintiffs' property; however, when PW-3, the attorney for plaintiffs, was examined on this point, he replied in negative that he has no knowledge

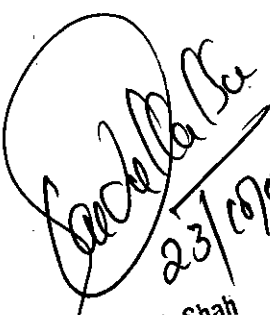
  
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of the properties. The testimonies of these witnesses were inconsistent and did not corroborate the claims of ownership or possession adequately.

On the other hand, the defendant provided compelling evidence that established their legal rights over the property, which the lower court properly weighed against the plaintiffs' claims.

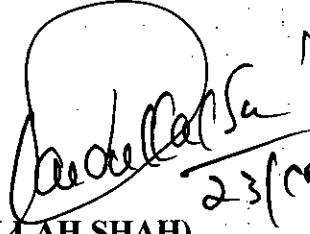
✓ During the course of arguments, an objection was raised that two main issues – the suit of the plaintiffs is time barred and the boundaries of the suit property are not specified – have not been framed by the trial court. Although these issues were not addressed during the trial, but it remains the responsibility of the plaintiffs to provide sufficient proof to establish their stance rather shifting this burden to another party.

- (7). In these circumstances, it is held that the arguments put forth by the plaintiffs do not raise any substantial legal questions or factual inconsistencies that warrant a reconsideration of the lower court's judgment. The findings of the lower court vide impugned judgment/decreed dated 27.06.2024 were well-reasoned and supported by the evidence on record. Therefore, the appeal in hand resultantly stands dismissed being meritless with no order as to cost.

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

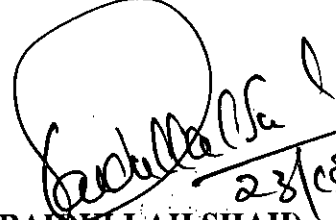
Dated: 23.10.2024

  
(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: 23.10.2024

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