

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

CIVIL APPEAL NO. : 11/13 OF 2021
DATE OF INSTITUTION : 14.01.2021
DATE OF DECISION : 20.03.2021

MALAK KHALIL UR REHMAN S/O GHAZI MARJAN, CASTE RABIA KHEL, TAPA AYAZ KHEL, WALI KHEL, VILLAGE TABI, DISTRICT ORAKZAI AND FOUR OTHERS

.....(APPELLANTS)

-VERSUS-

GUL ZAMAN S/O ALI DAAN SHAH, R/O CASTE KAREGARAN, GHOZ GARH, DISTRICT ORAKZAI AND TWELVE OTHERS

.....(RESPONDENTS)

Present: Fazal Malik Kakakhel Advocate for appellants.
: Ahmad Naseem Advocate for respondent no. 1

JUDGEMENT
20.03.2021

In the suit before the trial court, appellants/plaintiffs through suit for declaration, perpetual and mandatory injunction and possession alongwith specific performance of agreement deed dated 13.09.2015 converted into written deed on 11.04.2017 and agreement deed dated 13.01.2019 claimed that they alongwith respondents no. 7 to 13 are jointly owners in possession of the suit mountain to which the respondents/defendants no. 1 to 3 have got no concern with the same. That on account of decision of the arbitrators dated 13.09.2015 plaintiffs were declared owners of the suit mountain and thereafter an official jirga was constituted which also decided the matter in favour of plaintiffs through deed Ex. PW 1/1 dated 13.01.2019. It was claimed that the respondents/defendants have illegally cut trees worth Rs. 2,520,000/- as well as illegally extracted precious stone from the


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suit mountain worth Rs. 300,000/-. The denial on the part of respondents/defendants either to accept plaintiffs as owners in possession or to pay compensation in respect of alleged cutting of trees and extraction of stones compelled the plaintiffs to institute the suit in the trial court.

2. The learned trial court after full trial dismissed the suit vide impugned judgement and decree dated 21.12.2020, hence the appeal in hand.

3. Arguments heard and record perused.

4. From the arguments and record available on file, it reveals that the contention of the appellants is that initially when the dispute between the parties arose then the matter was referred to the arbitrators in the year 2015 wherein appellants/plaintiffs produced two witnesses while ten persons took oath in support of their stance before the arbitrators and accordingly the suit mountain was held the ownership of appellants/plaintiffs and the same was handed over to them. It is alleged that the arbitrators delivered the verdict on 13.09.2015, however the same was reduced into writing on 11.04.2017 and produced in evidence as Ex. PW 1/1. The witnesses of the said deed are Farid Gul and Gul Qadir who appeared in evidence as PW-3 and PW-4 respectively. In the evidence the witness, Farid Gul PW-3 showed ignorance with regard to taking of oath of plaintiffs' witnesses before the arbitrators besides did not utter a single word with regard to the evidence of two witnesses recorded by the arbitrators. The said witness in his cross examination also deposed that he is not the witness of anything and that he only shown the process of oath to the parties. The other witness of Ex. PW 1/1

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namely, Gul Qadir Khan PW-4 neither utter a single word with regard to the Ex. PW 1/1 nor verified his signature on Ex. PW 1/1. Moreover, in the whole evidence neither the ten persons who took oath nor the two persons who adduced evidence in support of appellants/plaintiffs were produced to support the stance of the appellants/plaintiffs with regard to the deed Ex. PW 1/1. Also, it was not explained as to when the jirga was held on 13.09.2015? why the same was not reduced into writing by that time and why it was delayed till 11.04.2017 in shape of Ex. PW 1/1? Moreover, the said deed is neither signed by the appellants/plaintiffs nor by the respondents/defendants nor any evidence oral or documentary was produced showing authorization of the parties to the arbitrators for resolution of the matter. The perusal of Ex. PW 1/1 reveals that Khima Gul, Eid Marjan, Eid Zaman and Namar Shah were initially appointed as jirga members who thereafter appointed Gul Qadir PW-4 as arbitrator but none of the said jirga members were produced to support either the document Ex. PW 1/1 or the stance of the appellants/plaintiffs with regard to the said document. As such, the trial court has rightly held that the appellants/plaintiffs failed to prove the execution of document Ex. PW 1/1 in their favour.

5. Another deed dated 13.01.2019 Mark-A, the specific performance of which is also sought in the plaint, when gone through, it provides that it is a sort of decision between the parties wherein the appellants/plaintiffs were again asked to took oath in support of their stance but on account of refusal of respondents/defendants the oath proceedings were not carried out and the jirga members resultantly held the appellants/plaintiffs as entitled for the claim. However, the



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perusal of Mark-A reveals that the details of dispute are not mentioned therein besides the appellants/plaintiffs claimed that the decision carried out by the jirga members were officially nominated by the then APA, Orakzai but no record or order of the APA was produced showing nomination of the jirga members for the resolution of the matter in question. It was also not explained as when the matter was allegedly already decided in the year 2015, what was the need of the second jirga. The witnesses of Mark-A are Malik Khial Maan Shah and Malik Haji Ezat Gul who appeared in evidence as PW-5 and PW-6 respectively, but both in their evidence neither uttered a single word with regard to the deed Mark-A nor verified their signatures of the said deed besides both the said PWs admitted in cross examination that on the basis of verdict of jirga members Mark-A, no award was issued by the APA, Orakzai. As such, neither the document Mark-A proved within the meanings of Article 17 and 79 of The Qanoon e Shahadat Order, 1984 nor the same was proved official nor it was proved that by virtue of the said document the matter in question was disposed of finally in favour of appellants/plaintiffs.


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6. The evidence of PW-1 when gone through it provides that he admitted therein that initially the dispute arose in the year 1992 when the defendants forcibly occupied the suit mountain and cut the trees and that he is residing since then with the suit mountain but no suit was brought till 2019 when the suit under appeal was instituted. Besides not an iota of evidence was adduced showing the illegal cutting of trees and extraction of precious stones by the respondents/defendants from the suit premises. As such, not only the appellants/plaintiffs failed to prove their version but also their suit is

time-barred under the Article 64, 113 and 120 of the Limitation Act. Thus, the trial court in the circumstances has rightly dismissed the suit of the appellants/plaintiffs for want of proof and the same being time-barred. The impugned judgement and decree of the trial court in the circumstances in unexceptional and not open to any interference by the present court. Accordingly, impugned judgement and decree of the trial court stands upheld/maintained and the appeal in hand resultantly stand dismissed being meritless with cost throughout. File of the trial court be returned while file of this court be consigned to Session Record Room after its completion and compilation.

Announced
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CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

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