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IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I, ORAKZAI (AT BABER MELA).

Original Civil suit No	**59/1 of 2022**
Date of original institution	**13.01.2020**
Date of institution	**06.10.2022**
Date of decision	**17.05.2023**

1. **Haji Zarman Shah S/o Akbar Shah**
   Resident of Qoam Sheikhan, Tappa Umarzai, District Orakzai.

…….. (Plaintiff)

Versus

1. **Mehboob Ali S/o Muhammad Raees Khan**
2. **Haji Rehmat Khan S/o Fazal Khan**
   Both residents of Qoam Rabia Khel, Tappa Payo Khel, Upper District Orakzai.
3. **Deputy Commissioner District Orakzai.**
4. **Provincial Government by Secretary Mines & Mineral KPK, Peshawar.**
5. **Assistant Directors Mines & Mineral Lower Orakzai.**
6. **Director Mines & Mineral Kohat Division, Kohat.**

…….(Defendants)

SUIT FOR DECLARATION CUM PERPETUAL & MANDATORY INJUNCTION.

JUDGMENT:

1. Brief facts of the case are that plaintiff filed the instant suit for declaration-cum perpetual mandatory injunction to the effect that there was a partnership between the plaintiff and a person namely Raees Khan who was the father of defendant No.1 and brother of defendant No.2, with respect to coal mine in which the plaintiff was owner of 75% shares while Raees Khan was owner of 25% shares. That after demise of Raees Khan the profit and loss was shared by the defendants with the plaintiff. That in the year 2008, due to deterioration of law and order situation in District Orakzai and the

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said coal mine caught fire which resulted in closing of the business. That after restoration of law and order situation in the year 2017, the defendant No.1 & 2 were asked for restarting the mining activities but they refused. Thereafter, the plaintiff spent a huge sum of money over the said coal mine by his own and started business activities. That after coming to know about success of the business, the defendants began to raise claims and started interference in the business. That the defendants have stopped mining activities in the said mine by force, due to which plaintiff sustained monetary loss. That the defendants were asked not to interfere in the business activities, as the past partnership ceased to exist but they refused, hence in the present suit.

2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiff was resisted on many legal as well as factual grounds.

3. The divergent pleadings of the parties were reduced into the following issues.

ISSUES.

1. ***Whether the plaintiff has got cause of action? OPP***
2. ***Whether the plaintiff is estopped to sue? OPD***
3. ***Whether the suit of the plaintiff is time barred? OPD***
4. ***Whether the present suit is bad for mis-joinder and non-joinder? OPD***
5. ***Whether partnership of running business over the disputed coal mine exists between the plaintiff and defendant No.01 & 02? OPP***
6. ***Whether the plaintiff has spent 5/6 crore rupees over the disputed coal mine? OPP***
7. ***Whether mining is illegally stopped by the defendants in the disputed coal mine? OPP***
8. ***Whether the plaintiff is entitled to the decree as prayed for? OPP***

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9. Relief.

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiff in support of his claim and contention produced 06 Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

	WITNESSES	**EXHIBITIS**
PW-1	Yaqoub Shah S/O Zarman Shah Resident of Qoam Sheikhan, Tappa Umarzai, Central District Orakzai.	Copy of Iqrar Nama related to partnership agreement is Ex.PW-1/1.
PW-2	Muhammad Daud S/O Muhammad Rauf Resident of Qoam Sheikhan, Tappa Samozai, Central District Orakzai.	Original Affidavit related to jirga is Ex.PW-2/1.
PW-3	Bakht Ameer S/o Syed Hassan Resident of Qoam Sheikhan, Tappa Umarzai, Central District Orakzai.	Nil
PW-4	Akhter Gul S/o Nomer Gul Resident of Qoam Sheikhan, Tappa Umarzai, Central District Orakzai.	Copy of affidavit of salisan dated:14.09.2018 is Ex.PW-4/1.
PW-5	Jehanzeb Khan S/O Awal Jan Resident of Qoam Sheikhan, PO Mishti Mela, Central District Orakzai.	Nil
PW-6	Sarteef Khan S/O Zarman Shah Resident of Qoam Sheikhan, Tappa Umarzai, Central District Orakzai.	Power of attorney is Ex.PW-5/1.

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Defendants in support of his claim and contention produced three (03) witnesses. Detail of defendant's witnesses and exhibited documents are as under;

WITNESSES		EXHIBITIONS
DW-1	Muhammad Mehboob S/O Raees Khan residents of Qoam Rabia Khel, Tappa Payo Khel, Upper District Orakzai.	Copy of CNIC as Ex. DW-1/1.
DW-2	Muhammad Farooq S/o Iraq Shah Residents of Qoam Malk Deen Khel District Orakzai.	Nil
DW-3	Talib Badshah S/o Noorab Shah Resident of Azgharo Banda District Hangu.	Nil

5. Learned counsel for the plaintiff Mr. Lal Habib Khan Advocate argued that plaintiff has produced cogent evidence and reliable witnesses to prove that the partnership between the parties has ceased to exists. That the plaintiff is the sole owner of the business and there is no other partner in the same. The witnesses are consistent in their statements. That the plaintiff has produced reliable documents by which the plea of the defendants is negated.

6. Learned counsel for the defendants Mr. Khursheed Alam Advocate argued that the plaintiff has not produced sufficient evidence in order to proof their case. That the defendants are still shareholders in the business. Moreover, the claim of the plaintiff regarding spending 5/6 crore rupees on the disputed business has not been proved by the plaintiff.

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7. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my

issue-wise findings are as under: (132)

ISSUE NO.2:

Whether the plaintiff is estopped to sue?

8. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore issue is decided in negative and against the defendants.

ISSUE NO.3:

Whether the suit of the plaintiffs is time barred?

9. Though the defendants have taken the defense that the suit is not within time but they neither produced any evidence nor the point was agitated before the court at the time of arguments. Even otherwise, there is nothing available on record which suggests the fact that the suit is time barred.

10. Moreover, period of limitation for filling declaratory suit Under Article 120 of limitation Act, is six years. Furthermore, after the 25th constitutional Amendment Act, 2018, all federal and provincial law extended to the newly merged Districts in 2018. Therefore, it is held that the suit is well within time. Hence, the issue is decided in negative.

ISSUE NO.4:

Whether the present suit is bad for mis-joinder and non-joinder?

11. Onus of proving this issue was on defendants, but they have not produced a single piece of evidence, which could establish that any necessary party has not been impleaded or any improper party has been arrayed in the suit. Hence, the issue is decided in negative.

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ISSUE NO.5:

Whether partnership of running business over the disputed coal

mine exists between the plaintiff and defendant No.01 & 02?

12. The claim of the plaintiff is that he was in partnership with a person namely Raees khan who was the father of the defendant No.1 and brother of Defendant No.2, however, the partnership ceased to exist after deterioration of law and order situation in district Orakzai and after fire has erupted in the said coal mine. Moreover, when the plaintiff started the business afresh in the said coal mine in the year 2017, he had offered partnership to the defendants in the said coal mine but they have turned deaf ear to the said offer. Counterly, the defendants contended that the said partnership still exists between the parties to the date. Burden of proof regarding the issue was primarily on plaintiff at first instance and secondly on the defendants in rebuttal of the stance of the plaintiff. Plaintiff in order to discharge this duty, produced six witnesses. The essence of their statements which helped in deciding the issue are as under.

13. Yaqoob shah, who deposed as PW-01, while supporting the claim of the plaintiff stated in his examination in chief that the agreement dated 13.01.2003 which is Ex.PW 1/1, pertaining to the partnership in the coal mine, correctly bears his signature. The contents of the said document are correct. The said PW stated in his cross examination that fire has erupted in the coal mine in the year 2008/09.

14. PW-02 and PW-03 are the statement of Muhammad Dawood and Bakht Ameer who recorded in their examination in chief that the contents of Ex.PW 2/1 are correct and correctly bears their signatures. They said that the aforementioned document is our statement on oath and we were jirga members who were sent with an offer of renewal of partnership agreement to the defendants. The said documents also state that plaintiff has spent huge amount on the reconstruction of the

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coal mine, however PW-02 stated in his cross examination that he has no evidence regarding the spending of the huge amount on the said mine.

15. PW-04 and PW-05 are the statement of Akhtar Gul and Jehanzeb Khan who recorded in their examination in chief that the contents of Ex.PW 4/1 are correct and correctly bears their signatures. The said document pertains to our statement on oath along with other Jirga members regarding the jirga decision, in which the jirga condemned the defendants in the jirga and decided the matter in favor of plaintiff. PW-05 stated in his cross examination that twenty (20) jirga members attended the said Jirga.

16. Sarteef Khan who is power of attorney for plaintiff recorded his statement as PW-06. The said PW reproduced the contents of the plaint in support of the stance of the plaintiff and placed reliance on the exhibited documents. The said PW admitted in the cross examination that he doesn't have any documentary proof of the termination of the agreement. He also admitted that he has not produced any receipt of the amount spent on the renovation of the coal mine and start of the business afresh.

17. Defendants in order to discharge their duty of proving their stance, produced three witnesses. The essence of their statements which helped in deciding the issue are as under.

18. Muhammad Mehboob, who deposed as DW-01, while supporting the claim of the defendants stated in his examination in chief that we had signed the partnership agreement with the plaintiff in 2005 and our accounts are clear till 2009. That the coal mine was closed till 2016 and plaintiff without consulting us has started business in the coal mine afresh in 2017 and since then they have not paid our share in the

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same. The said DW stated in his cross examination that the said agreement deed was signed by my father who died in 2005. Further stated that the plaintiff has not contacted us for starting business afresh.

19. DW-02 is the statement of Muhammad Farooq who stated in his examination in chief that in the year 2017, the defendants have sent me as an accountant for making the accounts clear with the plaintiff. Nothing worth mentioning was recorded in his cross examination.

20. DW-03 is the statement of Talib Badshah who recorded in his statement that I accompanied DW-2 in order to claim the share of defendants from the plaintiff in 2017. Nothing worth mentioning related to the issue was recorded in his cross examination.

21. The statements of aforementioned witnesses produced by the plaintiff in support of their stance and the witnesses produced by defendants in rebuttal of the stance of plaintiff, brought the facts before the court, which provided reasons mentioned hereinafter, to decide the issue in hand. Shedding light over the statements of PWs, the following observations were noted down by this court. Firstly, the plaintiff has proved his stance through the statements of PWs and exhibited documents that the plaintiff and father of defendant No.1 and brother of defendant No.2 were in partnership in the produce of the coal mine. The coal mine remained non-functional from 2008 to 2017 and when the plaintiff started business again, he sent delegation to the defendants for sharing expenses of re-starting of the business. The defendants refused to contribute in the said expenses. Secondly, two witnesses were produced in the course of evidence by the plaintiff who confirmed the authenticity of Ex.PW-2/1 and stated that the defendants had refused to contribute in the expenses of renovation of

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coal mine. Thirdly, the plaintiff produced two witnesses among the jirga member who conducted jirga regarding the dispute, which was decided in favour of the plaintiff. Fourthly, death of the person namely Raees Khan who has signed partnership agreement with the plaintiff, burning down of the coal mine, stoppage of business activities for nine (09) years, refusal of the defendants for bearing expenses to start afresh business activities in the coal mine and decision of the jirga in favour of the plaintiff amounts to termination of the original agreement. Lastly, the defendants have failed to prove that the partnership still exists between the plaintiff and defendants.

22. Keeping in view the above discussion, it is held that plaintiff has produced cogent, convincing and reliable oral and documentary evidence in support of his claim, therefore, issue No.06 is decided in favour of the plaintiff.

ISSUE NO.6:

Whether the plaintiff has spent 5/6 crore rupees over the disputed coal mine?

23. The burden of proof regarding the issue was on plaintiff. Plaintiff had to prove that he has spent the said amount on the renovation of coal mine and to start the afresh the business activities in the same. The issue was framed keeping in mind the claim of the plaintiff and which might have been in consideration if the court had decided that the partnership still exists between the parties. However, since the partnership is deemed to have been terminated by the reasons mention in the issue No.5 and the plaintiff failed to prove the spending of the said amount on the coal mine and restarting the business, hence, the issue is decided in negative.

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ISSUE NO.6:

Whether mining is illegally stopped by the defendants in the disputed coal mine?

24. The plaintiff has claimed in the plaint that the defendants had stopped the mining activities in the disputed coal mine by force and due to which loss of rupees 32000/- is accruing on daily basis to the plaintiff. The burden of proof regarding the issue was on plaintiff. However, the issue was not addressed in the evidence. Neither statement of any PW was recorded to this extant nor any document was provided by the plaintiff in support of this issue. Hence, the issue is decided in negative.

ISSUE NO. 1 and 8:

Whether plaintiff has got cause of action?
Whether plaintiff is entitled to the decree as prayed for?

25. Both these issues are interlinked, therefore, taken together for simultaneous discussion.

26. The discussions on the above referred issues show that plaintiff has proved his case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, the plaintiff has got cause of action and is entitled to the decree as prayed for up to the extent of declaration that defendants have no right to claim shares in the business and up to the extent of permanent injunction against the defendants.

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27. Thus, issues No.01 and 07 are decided in positive.

RELIEF:

28. Based on the above issue wise discussion, the instant suit of the

plaintiff is hereby decreed in favor of the plaintiff against the defendants as prayed for.

29. Cost to follow the events.

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

Announced
17.05.2023

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CERTIFICATE: -

Certified that this judgment consists of Eleven (11) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

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