

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL REVISION NO. : 2/12 OF 2023
DATE OF INSTITUTION : 17.01.2023
DATE OF DECISION : 23.01.2023

1. AMEEN KHAN
 2. BASWERA BIBI D/O JANAN KHAN
 3. RAHEEMA BIBI D/O JANAN KHAN
 4. YASINA BIBI D/O JANAN KHAN
 5. AFNAN BIBI D/O JANAN KHAN
- ALL RESIDENTS OF CASTE MISHTI, TAPA DARWI KHEL,
TEHSIL CENTRAL, DISTRICT ORAKZAI
.....(PETITIONERS)

-VERSUS-

1. ABDUL JAMEEL S/O NARYAB GUL, R/O CASTE RABIA KHEL,
VILLAGE GARI, DISTRICT ORAKZAI
..... (RESPONDENT)

Present: Sana Ullah Khan Advocate for petitioners

ORDER
23.01.2023

Sana Ullah Khan Advocate, the counsel for petitioners
present. Preliminary arguments heard.

Impugned herein is the order dated 30.11.2022 of learned
Civil Judge-I, Tehsil Kalaya, vide which application of petitioners
(LRs of defendant no. 2) for rejection of plaint under order 7 rule
11 of the CPC has been turned town.

- (2). As per averments of the plaint, the respondent Abdul Jamil
(plaintiff) through a civil suit against Janan Khan (the predecessor
of petitioners) and two others, sought declaration and possession
of the suit property to the fact, that he is owner of the suit property
while the defendants were tenants of the same against a sum of Rs.
2500/- per year, that the defendants have regularly paid the amount
of rent till 2012 and that after 2013 the defendants have neither

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paid the amount of rent nor they are going to vacate the suit property. Hence, the present suit.

The defendants Waziristan and Hazrat Akbar submitted written statement and contested the suit, while the LRs of Janan Khan, the defendant no. 02, submitted application for rejection of plaint under order 7 rule 11 CPC on the ground, that a previous suit regarding the same cause of action has already been decided vide order dated 26.10.2018 of the then Assistant Commissioner, Lower Orakzai and that the instant suit is res-adjudicate. The application was contested by respondent/plaintiff and the learned Civil Judge-I, Tehsil Kalaya, District Orakzai, after having heard the arguments, turned down the same on the ground, that as a result of merger of erstwhile FATA into Khyber Pakhtunkhwa, after receipt of record of the lis between the parties, the learned Civil Judge-II, Orakzai vide order dated 18.09.2019 consigned the same with permission to the parties to file a fresh suit and that the instant suit has been filed in view of the permission of the court. He has also hold that a previous application for rejection of plaint has already been turned down vide order dated 11.04.2020 of the learned Civil Judge-I, Orakzai.

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After having heard the preliminary arguments of learned counsel for petitioners and after going through the record annexed by the petitioners with the instant revision petition, it is observed that on one hand the instant suit is alleged to have been filed in the light of permission granted vide order dated 18.09.2019 of learned Civil Judge-II, Orakzai which has not been challenged before any forum so far, while on the other hand it is alleged that in previous

proceedings before the then Assistant Commissioner, the lis was decided in favour of petitioners. However, both the questions are mixed questions of law and facts which cannot be decided without recording of pro and contra evidence. When learned counsel for the petitioners was confronted with the aforementioned situation, he submitted that he would have got no objection if the instant revision petition is disposed of with the directions to the learned trial court to frame issue in respect of res-adjudicate and decide the same on the basis of merits.

(4). Hence, in view of the aforementioned discussion, the instant revision petition is disposed of with the directions to learned trial court to frame issue in the light of objection of res-adjudicate raised by the petitioners in their written statement and decide the same during final disposal of the suit after recording of pro and contra evidence. File of this court be consigned to record room. Copy of this order be sent to learned trial court for information and compliance.



Pronounced
23.01.2023

(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this order consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 23.01.2023

(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela