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

CIVIL REVISION NO. : 1/12 OF 2023
DATE OF INSTITUTION : 06.01.2023
DATE OF DECISION : 30.01.2023

1. HAJI QABIL NOOR S/O FAZAL NOOR
 2. ZULFA KHAN S/O HAIDER KHAN
 3. ASHNA DIN S/O SHARAB DIN
- ALL RESIDENTS OF CASTE QAMAR KHEL, SULTANZAI,
TEHSIL LOWER, DISTRICT ORAKZAI

.....(PETITIONERS)

-VERSUS-

1. KHWAJA MUHAMMAD KHAN S/O ATEEQ ULLAH
 2. MUHAMMAD HAYAT S/O AIN ULLAH
 3. OLAS KHAN S/O RAHEEM ULLAH KHAN
- ALL RESIDENTS OF CASTE ABDUL KHEL, VILLAGE QUDOOS,
TEHSIL LOWER, DISTRICT ORAKZAI

.....(RESPONDENTS)

Present: Mudassir Ijaz Advocate for petitioners.
: Abid Ali Advocate for respondents.

JUDGEMENT
30.01.2023

Impugned herein is the order dated 18.12.2022 of learned Civil Judge-II, Tehsil Kalaya, District Orakzai vide which application of petitioners, being plaintiffs, for withdrawal of the suit with permission to file a fresh one under Order 23 Rule 1 CPC has been turned down.

- (2). In a suit before the learned trial court, the petitioners/plaintiffs claimed that they are owner in possession of a land measuring 25 Jeribs as per sketch annexed with the plaint detailed in the headnote of the plaint while respondents/defendants have got no concern whatsoever with the suit property. As per averments of plaint, the parties jointly owned a land measuring 50 Jeribs regarding which the petitioners/plaintiffs filed a suit which was decided on 16.03.2021. The parties partitioned the property vide a deed annexed with the plaint, as a result of which the suit

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property measuring 25 Jeribs was allotted to the petitioners/plaintiffs. That the respondents/defendants having got no concern with the suit property are bent upon making interference in the suit property by making construction over there.

The respondents/defendants contested the suit by filing a written statement wherein they raised objections to the fact that the respondents/defendants, being belonging to caste Orakzai, are the original owner of the suit property while petitioners/plaintiffs, being belonging to caste Qamber Khel Afridi of District Khyber, are their tenants, that the previous suit instituted on 27.02.2022 has been withdrawn by the petitioners/plaintiffs on 16.03.2022 and that the alleged partition deed was executed between the parties to the extent of government scheme wherein the petitioners/plaintiffs have forged the last 03 lines pertaining to partition of the suit property. They also raised other legal and factual objections.

During pendency of the suit, the petitioners/plaintiffs submitted application for withdrawal of suit with permission to file a fresh one on the ground, that there are formal defects in the suit which may result in failure of the suit. The respondents/defendants submitted reply and contested the application on the ground, that no legal or formal defects have been pointed out by petitioners/plaintiffs in their application and that the petitioners/plaintiffs, after their failure to get a status-quo after stretching the interim status-quo for about 02 years, have filed the instant application. The learned trial court, after having heard the arguments, turned down the application on the ground


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that petitioners/plaintiffs failed to point out any formal defects in the suit.

The petitioners/plaintiffs, being aggrieved of the impugned order; filed the instant revision petition.

(3). I heard arguments of learned counsels for the parties and perused the record.

(4). Perusal of case file shows that the claim of the petitioners/plaintiffs regarding the quantity of land and its boundaries as detailed in the plaint, is vague. Similarly, details regarding the previous suit, its decision, execution of the agreement deed and their effect upon the determination of rights of the parties are also not given in the plaint. During the course of arguments, counsel for the petitioners/plaintiffs submitted that the petitioners/plaintiffs also want to implead all the necessary and proper parties to the suit and want to add a relief of specific performance of contract in the plaint. All the aforementioned defects are formal in nature which may lead to failure of suit.

Needless to mention that allowing the petitioners/plaintiffs to file a fresh suit does not bar the respondents/defendants to raise objection in their written statement regarding non-joinder and miss-joinder of parties, the authenticity and legality of the alleged agreement deed and miss-joinder of different causes of action. The objection of the respondents/defendants regarding the fact that the instant suit has been instituted on 09.07.2021 and the petitioners/plaintiffs being aware of this formal defect in their plaint, have kept waiting for dismissal of their status-quo application after stretching the interim status-quo in their favour,

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have filed the instant application after a delay of about an year, to some extent seems genuine for which the respondents/defendants can be compensated in terms of imposing cost upon petitioners/plaintiffs but that deficiency would not alone be sufficient to dismiss the application of the petitioners/plaintiffs.

(5). Hence, in view of what is discussed above, it is held that the learned trial court has failed to exercise jurisdiction wasted in; therefore, on acceptance of instant revision petition, the impugned order dated 18.12.2022 is set aside. Suit of the appellants/plaintiffs is dismissed with permission to file a fresh one with a cost of Rs. 8000/- to be paid to the present contesting respondents/defendants no. 1 to 3 at the time of institution of fresh suit. File of this court be consigned to record room and copy of this judgment be sent to the learned trial court for information and compliance.



Pronounced
30.01.2023


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CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.01.2023


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