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In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-16/13 of 2022

Date of institution: 26.10.2022

Date of decision: 08.03.2023

Khan Haider son of Mir Haider resident of Qaum Rabia Khel, Tappa Piyao Khel, village Injavar, District Orakzai.

..... **(Appellant/plaintiff)**

...Versus...

Muhammad Hayat son of Majnun Khan, resident of Qaum Rabia Khel, Tappa, Behram Khel, village Chano Tang, District Orakzai.

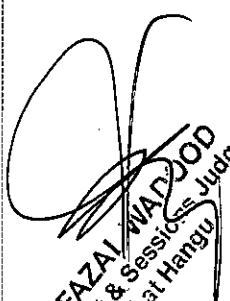
..... **(Respondent/defendant)**

**Appeal against Judgement, Decree and Order dated 24.09.2022,
passed in Civil Suit No. 47/1 of 2020.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 24.09.2022, passed by learned Senior Civil Judge, Orakzai in Civil Suit bearing No.47/1 of 2020; whereby, suit of the appellant/plaintiff with the title of "Khan Haider vs Muhammad Hayat" was dismissed.

2. Khan Haider (plaintiff hereinafter) has entered into contract dated 30-08-2016 with Muhammad Hayat (Defendant hereinafter) for payment of amount of Rupees six hundred (600/-) on the basis of forty ton excavation of coal in the leased area of coal mining. The defendant has paid an amount of Rupees two lac since the date of commencement and is bound to pay the remaining amount which was denied and the matter was dragged to Court in suit for specific performance of contract, recovery of agreed due amount, rendition of account and mandatory injunction with the prayer of recovery of possession in alternative.


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Orakzai at Hangu


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3. Defendant/respondent objected the suit on various legal as well as factual grounds in his written statement. It was specifically pleaded that defendant is lease holder of coal mining and had validly entered into agreement with the plaintiff to the extent of using his land. Pursuant to such contract dated 31-08-2016, defendant had paid an amount of four lac rupees to the plaintiff through different persons and thus nothing is outstanding on his part.

4. The material preposition of facts and law asserted by one party and denied by other have separately been put into following issues by the learned Trial Judge.

- i. *Whether plaintiff have got a cause of action?*
- ii. *Whether suit of the plaintiff is time barred?*
- iii. *Whether the plaintiffs are estopped to sue?*
- iv. *Whether the plaintiff is entitled to the recovery of an amount of Rs. 600/ton of coal excavated from the suit property since 31-06-2016 till the pendency of suit from the defendant as per the agreement deed, dated 31-08-2016?*
- v. *Whether the plaintiff is entitled to the recovery of possession of the suit property in the alternate?*
- vi. *Whether the plaintiffs are entitled to the decree as prayed for?*
- vii. *Relief?*

5. Opportunity of leading evidence was accorded to the parties. Defendant failed to appear before the Court, hence was placed and proceeded ex-parte. Plaintiff himself appeared as PW-1 produced the contract relied upon as Annexure-A and closed his evidence.


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Scribe & Sessions Judge
Muzrai (Muzrai)

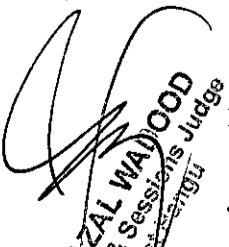
6. Mr. Ihsan Ullah Khan Bangash Advocate for appellant argued that plaintiff has proved his case on the strength of oral and documentary evidence of the sufficient category. Besides, material facts have been admitted by the defendant and grant of decree was natural course of things. Dismissal of suit is based on non-reading of evidence that has not properly been appreciated. The refusal of the decree is the decision being contrary to law may be set aside and suit of the appellant may be decreed.

7. Respondent/defendant failed to put appearance despite notice served and thus no one represented him in Trial Court as well as in the Court of Appeal.

8. It has categorically been admitted by the defendant in his written statement that Contract Deed dated 31-08-2016 has been executed between the parties. Plaintiff alleges that he was paid an amount of Rupees two lac; whereas, defendant is of the stance that he has paid all of the amount worth Rupees four lac and nothing is balance.


9. The apple of discord between the parties that had given birth to instant litigation, is that defendant has termed full payment of Rupees four lac; whereas, plaintiff contends that payment was just two lac and rest of the amount is yet to be paid. Whether plaintiff is entitled for payment of amount in line with the contract dated 31-08-2016 and defendant has wrongly taken hold of the balance amount and that plaintiff has wrongly been refused grant of decree, are the prime points of determination in pending appeal.

10. Keeping in view the admitted facts discussed in paragraph No.8 followed by point for determination mentioned in paragraph No.9 of this Judgement, the pleadings of the parties and evidence, when assessed, is


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reflecting that the plaintiff and contesting defendant had entered into written contract dated 31-08-2016 which is Annexure-A; signed by both the parties and admitted as genuine document. This alone is sufficient to establish probability in favor of plaintiff and would require to be shattered by the defendant but let the evidence of the plaintiff may be considered for strengthening such probability. The facts of entering into the contract is admitted in pleadings which is clear, unambiguous and unqualified. The admitted fact is only relevant and not conclusive; therefore, the evidence produced has to be examined in such context. PW-1 has produced Agreement Deed as Annexure-A which was produced without any objection on part of the defendant. PW-1 has testified on oath that an amount of five lacs is the entire amount; wherein, he has received a total of two lacs rupees with three lacs as balance and unpaid sum. Defendant despite appearance and submission of written statement remained absent and the evidence was recorded as ex-parte. He neither shattered the probability established by the plaintiff nor proved his plea of defense in line with Article-118 of Qanun-e-Shahadat Order-1984. In such manner, the plaintiff has proved the case on the strength of oral and documentary evidence along with unqualified and clear admissions on part of defendant.

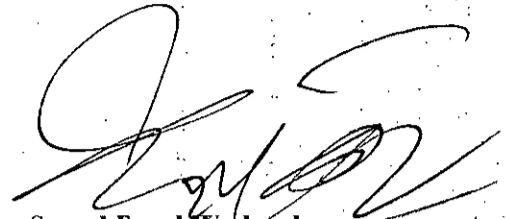
11. For what has been discussed above, it can safely be held that the learned Trial Court has erred in conclusion drawn; that too, for the reasoning not backed by proper application of law and thus not sustainable. Appeal in hand is allowed and consequently, the impugned Judgement and Decree dated 24-09-2022 is reversed. Suit of the plaintiff stands decreed as prayed for. Costs shall follow the events. Requisitioned


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record be returned back with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

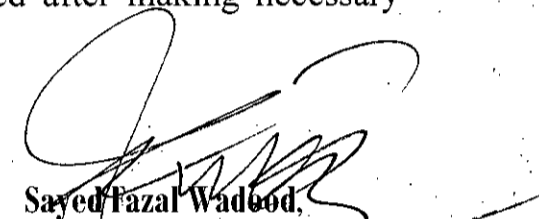
13. Announced in the open Court
08.03.2023



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon five (05) pages; each of which has been signed by the undersigned after making necessary corrections therein and red over to the parties.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela