

**IN THE COURT OF JAMAL SHAH MAHSOOD,**  
**ADDITIONAL DISTRICT JUDGE-I, ORAKZAI**

**Civil Appeal No. 4/19 Of 2019**

Date of institution 03-09-2019  
Date of Decision 24-10-2019

**Tajamal Hussain** s/o Speen Gul and **07 others**; all residents of Qoam Stori Khel, Tapa Tazi Khel, Tehsil Upper, District Orakzai  
**(Appellants)**

**Vs**

**Nasir Ali** s/o Baidar Ali and **04 others**; all residents of Qoam Mani Khel, Tapa Mirwas Khel, Starsam Orakzai and Assistant Political Agent (Assistant Commissioner) Lower Orakzai  
**(Respondents)**

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- Javid Muhammad and Jabir Hussain Advocates for Appellants
  - Muhabbat Khan Bangash Advocate for Respondents
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**APPEAL** against order and decree of learned CJ/JM-II, dated 16-07-2019, in case No 37/1. (**Impugned Order/Judgment**)

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**Judgment in Appeal:**

1. Through the impugned judgment, the learned lower court declared the case in hand to be a past and closed transaction; the suit of the appellants was disposed of accordingly and case file was consigned to record room.
2. The facts of the case, as can be ascertained from the available record, are that one Speen Gul (father of appellants No. 1-5) and 03 other persons filed a petition, dated 05-06-2014, before Political Agent Lower Orakzai (sic), with prayer for resolution of a dispute in respect of a residential house. According to this petition, one Baidar Ali, father of respondents No. 1-3, had

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allegedly sold the disputed house and some land to Speen Gul (father of appellants No. 1-5): that one Yaqoot Ali, a son-in-law of Speen Gul, and his family were in possession of the house, and that he was dispossessed by Baidar Ali on 05-06-2014. The Assistant Political Agent of Lower Orakzai constituted a Jirga in the matter and vide order dated 02-09-2015, the APA/ADM Lower Orakzai accepted the verdict of Jirga (dated 18-08-2015) and decided the case in favour of the defendant Baidar Ali (predecessor in interest of present respondents) and against Speen Gul (predecessor in interest of present appellants).

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3. On merger of FATA region into the Province of KP, the case was transferred to the court of Senior Civil Judge Orakzai and ultimately to the court of CJ-II Orakzai. The learned CJ-II, through the impugned order declared the case to be a past and closed transaction and thereafter consigned the case to record room.
4. Being aggrieved of the impugned judgment, the present appellants have filed the instant appeal. The main grounds taken in appeal are that the impugned judgement has been passed against law and facts of the case; that the case was not brought before Civil Court on petition of any of the parties; but that the same was transferred to Civil Court after merger of FATA in the province of Khyber Pakhtunkhwa. They have prayed for remand of the case for disposal on merits.

5. Notices were issued to the respondents, who appeared in person and through their counsel. Arguments were heard and the record has been perused.
6. As mentioned above, the impugned judgment has been passed on the basis of order of Assistant Commissioner, dated 02-09-2015. This order dated 02-09-2015, was passed when Frontier Crime Regulation, 1901 was a valid law. The final order sheet of the court of Assistant Political Agent available on the original file of instant case is dated 02-09-2015. Therefore, it is clear that the dispute was settled between the present parties by the APA on 02-09-2015, under a valid law. It seems that subsequently some persons, other than the present appellants, had filed an application before the AC Lower Orakzai on 05-09-2018. By 05-09-2018, the APA/AC had lost jurisdiction to deal with such cases, as the 25<sup>th</sup> constitutional amendment had been promulgated through Act No. XXXVII of 2018, dated 05-06-2018.
7. In the circumstances, it is clear that the present dispute between the parties before this court was conclusively determined by APA/ADM Lower Orakzai through the order and judgment dated 02-09-2015, and the same must be considered as a past and closed transaction.
8. The learned counsel for appellants, during arguments, mainly stressed on the point that since the case file was sent from the office of Assistant Commissioner to Civil Court and that therefore the case was a continuing one, is misconceived. The mere fact that the case was sent to Civil Court would not nullify the judgment

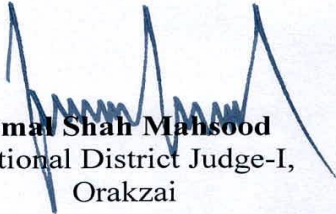
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dated 02-09-2015; especially when the Assistant Commissioner/APA had no jurisdiction to review his own judgment.

9. Resultantly, the instant appeal is **dismissed** being meritless. No infirmity could be pointed out in the impugned judgment. No order as to costs.

10. Let a copy of this judgment in appeal be placed on the record of the case and the same be returned to the quarter concerned. While this file be consigned to record room after its necessary completion and compilation.

**Announced**  
**24-10-2019**

  
**Jamal Shah Mahsood**  
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**CERTIFICATE**

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

  
**ADJ-I, Orakzai**