

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

CIVIL REVISION NO. : 3/14 OF 2023
DATE OF INSTITUTION : 17.04.2023
DATE OF DECISION : 25.05.2023

1. SYED AIN HUSSAIN S/O SYED IBRAHIM HUSSAIN
 2. SYED MUHAMMAD TAQI S/O SYED MOHSIN ALI
 3. SYED IMDAD HUSSAIN S/O SYED SULTAN HUSSAIN
 4. SYED NOOR HASSAN SHAH S/O SYED MUHAMMAD BADSHAH
 5. SYED TAJDAR HUSSAIN S/O SYED TAJAMAL HUSSAIN
ALL R/O CASTE BAR MUHAMMAD KHEL, TAPA BABA
NAWASI, VILLAGE JAABAR, TEHSIL LOWER, DISTRICT
ORAKZAI AND TWO OTHERS
-(APPELLANTS)

-VERSUS-

1. ABBAS GHULAM S/O MUHAMMAD SHAH
 2. AWAN ALI S/O NAWAB KHAN
 3. MALAK JAMAL HUSSAIN S/O SULTAN HUSSAIN
 4. ARIF ALI S/O MUHAMMAD ALI
 5. HABIB ALI S/O AMEER ULLAH KHAN
ALL R/O CASTE MUHAMMAD KHEL, TAPA ALLAH DAD
KHEL, VILLAGE KHANDO, TEHSIL CENTRAL DISTRICT
ORAKZAI
-(RESPONDENTS)

Present: Abid Ali Advocate, the counsel for appellants
: Insaf Ali Advocate, the counsel for respondents

JUDGEMENT
25.05.2023

Impugned herein is the order dated 16.03.2023 of the learned Civil Judge-II, Tehsil Kalaya, District Orakzai vide which the application of appellants/plaintiffs for withdrawal of the suit with permission to file a fresh one, has been dismissed.

(2). In a suit before the learned trial court, appellants/plaintiffs sought declaration and perpetual injunctions to the fact that they are owners in possession of the suit property detailed in the headnote of the plaint, since

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their forefathers while the respondents/defendants despite having got no concern whatsoever with the suit property, are bent upon making interference in the suit property by claiming the same to be their ownership. The suit was contested by respondents/defendants on various legal and factual grounds.

The appellants/plaintiffs submitted application for withdrawal of the suit with permission to file a fresh one, on the grounds mentioned therein which was contested by respondents/defendants. The learned trial court, after having heard the arguments, dismissed the same vide impugned order dated 16.03.2023. Being aggrieved of the order, the appellants/plaintiffs filed the instant appeal along with application for condonation of delay.

(3). Arguments heard and record perused.

(4). **APPLICATION FOR CONDONATION OF DELAY:**

The impugned order is passed on 16.03.2023 while the appellants/plaintiffs have applied for attested copies of the record on 15.04.2023 which have been issued to them on the same day. The instant appeal has been submitted on 17.04.2023. Excluding 15.04.2023 while computing the time for filing of appeal, the instant appeal should have been filed on 16.04.2023 which is Sunday which will also be excluded

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from the period of appeal. In such circumstances the appeal being filed on the next day i.e., on 17.04.2023, is within time.

APPEAL: As per contention of appellants/plaintiffs, the suit is a representative suit but the compliance of Order 1 Rule 8 of CPC have not been made, that the date of document has been inadvertently mentioned incorrect, that a documentary evidence in favour of appellants/plaintiffs has not been mentioned in the plaint and that some land out of the suit property has been transferred by appellants/plaintiffs for construction of government primary school and in lieu of which the appellants/plaintiffs have been given employments. That all these facts have not been mentioned in the plaint which may lead to failure of suit. The respondents/defendants contented the application on the ground that the defects pointed out by the appellants/plaintiffs in their plaint can be remedied through amendment of plaint and that the appellants/plaintiffs had already once withdrawn the suit and they cannot be permitted to withdraw the subsequent suit. It is evident from the record that the parties have no dispute over the factum of defects being formal in nature but the respondents/defendants claim that these defects can be remedied through amendment of plaint and the learned trial court has also concurred with the respondents/defendants advising appellants/plaintiffs to apply for amended plaint instead a passing of order for amendment of the same. Hence,

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as the defects pointed out by appellants/plaintiffs are formal in nature and they may lead to failure of the suit and there is no bar of withdrawal of the suit which has been itself instituted as a result of withdrawal of previous suit, the instant appeal is accepted and the impugned order dated 16.03.2023 of the learned Civil Judge-II, Tehsil Kalaya, District Orakzai is set aside and the application of appellants/plaintiffs for withdrawal of their suit is allowed; however, they are burdened of with a cost of Rs.10,000/- to be deposited at the time of presentation of plaint in a fresh suit payable to the present respondents/defendants. 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
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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: 25.05.2023


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