

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

CIVIL REVISION NO. : 4/12 OF 2023
DATE OF INSTITUTION : 03.05.2023
DATE OF DECISION : 07.06.2023

1. HASHMAT ULLAH
2. KIRAMAT ULLAH
3. SHAUKAT ULLAH
4. REHMAT ULLAH
SONS OF HAJI MUHAMMAD KAREEM KHAN
5. MUHAMMAD RAHEEM S/O MUHAMMAD YASIN
6. ALI AKBAR
7. SAEED AKBAR
8. SHAN AKBAR
SONS OF MUHAMMAD AKBAR
9. RAHEEM KHAN
10. BUZARG JAMEEL
11. SAEED JAMEEL
12. MIKAEL KHAN
SONS OF MOEEN KHAN
13. SADIQ KHAN
14. HAJI REHMAN
15. RAZ KHAN
SONS OF MUHAMMAD ANWAR
16. NABI REHMAN
17. RIZWAN
18. MASOOD UR REHMAN
19. FAZAL REHMAN
SONS OF ZIA UR REHMAN
ALL R/O CASTE UTMAN KHEL, PO FEROZ KHEL, TEHSIL LOWER,
DISTRICT ORAKZAI

.....(PETITIONERS)

-VERSUS-

1. MUHAMMAD KHAN
2. SAWAB GUL
SONS KAMEEN
3. HAZRAT AMEEN S/O AQAL MEEN
4. MUHAMMAD AYYUB S/O JANNAT GUL
5. ABDUL SALAM S/O PEENK KHAN
6. JANAB KHAN S/O BADSHAH GUL
ALL R/O KARIGAR, UTMAN KHEL, TEHSIL LOWER DISTRICT
ORAKZAI

..... (RESPONDENTS)

Present: Zahid Bashir Advocate, the counsel for appellants
: Mudassir Ijaz Advocate, the counsel for respondents

JUDGEMENT

07.06.2023

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela

Impugned herein is the judgment/order dated 12.04.2023

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 seek declaration-cum-perpetual and mandatory injunction to the fact that they, being belonging to one of the sub-tribes of Utman Khel, are owners in possession of the suit property situated at Zagh Dara Soor Rawoz which has been properly partitioned between three tribes of caste Utman Khel i.e., Shabi Khel (the tribe of appellants/plaintiffs), Barzan Khel and Aba Khel in equal shares as detailed in the headnote of the plaint. That the respondents/defendants, being neighbours/Karigar of Shabi Khel tribe, having got no concern whatsoever with the suit property are bent upon making interference by illegally occupying the share of appellants/plaintiffs in the suit property. The respondents/defendants were summoned who appeared before the learned trial court and submitted written statement and contested the suit 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 12.04.2023. Being aggrieved of the order, the appellants/plaintiffs filed the instant appeal.

- (3). Arguments heard and record perused.
- (4). It is evident from the record that the appellants/plaintiffs in their application before the learned trial court for withdrawal of


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their suit with permission to file a fresh one had pointed out the defects of non-impleadment of necessary parties, sketch and boundaries of the suit property, the pedigree table and list of co-owners of the suit property, as legal defects regarding which the learned trial court has hold that these defects can be removed through amendment in plaint; however, no order regarding amendment of plaint has been passed. The appellants/plaintiffs in memorandum of appeal, besides the aforementioned defects, has also pleaded that the appellants/plaintiffs no. 18 and 19 are minors who will be sued through their father and that some decisions of the then Assistant Political Agent and verdicts of jirgas regarding the suit property are also intended to be brought on record. The learned counsel for respondents/defendants submitted that none of the defects pointed out by the appellants/plaintiffs either in the application before the learned trial court or in memorandum of appeal would change the nature of the suit or the cause of action and all these defects can be removed through amendment in the plaint instead of withdrawing the suit. The learned counsel for respondents/defendants further submitted that he would have got no objection if the impugned order is modified to the extent of allowing the appellants/plaintiffs to amend their plaint. When the learned counsel for appellants/plaintiffs was confronted with the aforementioned situation he failed to point out that any of the defects pointed out by him would either change the nature of the suit or the cause of action; however, he still insisted upon his request that he may be allowed to withdraw the suit.

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- (5). Keeping in view the aforementioned discussion and the factum of raising no objection on behalf of counsel for respondents/defendants, it is held that as none of the defects pointed out by the appellants/plaintiffs in their application before the learned trial court or in memorandum of appeal would change the nature of the suit or the cause of action; therefore, in order to avoid the protraction of the trial, the impugned order of the learned Civil Judge-II, Tehsil Kalaya District Orakzai is modified to the extent that the appellants/plaintiffs are allowed to amend their plaint. Parties are directed to appear before the learned trial court on date fixed. Copy of this judgment be sent to learned trial court for information and compliance. Needles to mention here that the respondents/defendants would also be given opportunity to submit amended written statement of the amended plaint by the appellants/plaintiffs. Consign.

Pronounced
07.06.2023



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



CERTIFICATE

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

Dated: 07.06.2023


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