

IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL REVISION NO. : 4/12 OF 2021
DATE OF INSTITUTION : 17.03.2021
DATE OF DECISION : 18.03.2021

ILHAM ALI S/O IKRAM ALI, R/O CASTE MANI KHEL, TEHSIL LOWER, DISTRICT ORAKZAI

.....(PETITIONER)

-VERSUS-


INAZ ALI S/O GUL KHAN, CASTE MANI KHEL, TEHSIL LOWER, DISTRICT ORAKZAI

..... (RESPONDENT)

Present: Syed Hamza Gilani Advocate for petitioner.

JUDGEMENT
18.03.2021

In the suit before the trial court, the bone of contention is the pathway leading to the house of respondent/plaintiff allegedly blocked by the defendant. The claim of the respondent/plaintiff moves around the decision of Jirga dated: 31.08.2012 with regard to the suit pathway allegedly executed with the father of petitioner/defendant. The contention of the respondent/plaintiff was that the decision of Jirga dated: 31.08.2012 is in possession of Jirga members but however upon appearance two of the Jirga members denied its possession with them and claimed the same to be in possession of one, Hashim Jan. The representative of Hashim Jan appeared in the trial court as by then the Hashim Jan was dead and denied the possession of Jirga document dated 31.08.2012. Thereafter, an application for adducing secondary evidence with regard to the said


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document was submitted in the trial court, which application after due process is accepted by the trial court vide impugned order dated 10.03.02021 hence, the revision in hand.

2. Preliminary Arguments heard and available record perused.

3. From the arguments and record available on file, it reveals that the petitioner/defendant mainly objected the acceptance of application for secondary evidence on the ground that respondent/plaintiff could not prove as to in whom possession the document 31.08.2012 is available besides, no solid grounds have been taken in respect of missing of said document, therefore, the acceptance of application is against the principles enumerated in Article 76 of the Qanoon-e-Shahadat Order 1984. The ibid Article 76 provides the list of cases in which secondary evidence relating to a document may be given and one of the examples is when the document is out of reach of the person as in the present case. In the present case, right from the institution of suit it was alleged by the respondent/plaintiff that the Jirga document dated 31.08.2012 is not in his possession besides his contentions and efforts to extract the document from the possession of Jirga members could not bear the fruits, hence the adducing of secondary evidence with regard to the said document was the best option available to the

Asghar Shah

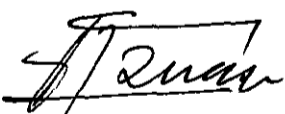
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respondent/plaintiff under the law. As such not only the solid grounds have been furnished by the respondent/plaintiff with regard to the non-availability of the said document with him but also the Jirga members in their statements supported his stance regarding the non-availability of the document in question.

- 4. Therefore, the trial court has rightly accepted the application of the respondent/plaintiff for adducing secondary evidence with regard to the Jirga document dated 31.08.2012. No jurisdictional error in the impugned order of the trial court is pointed out, hence the same stand upheld/maintained and the revision in hand resultantly stand dismissed in limine being meritless with no order as to costs. Copy of the judgement be sent to the trial court for the purpose of the record.
- 5. File be consigned to Session Record Room after its completion and compilation.


Announced
18.03.2021


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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 18.03.2021


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18.3.21

