

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

CIVIL APPEAL NO. : 7/13 OF 2020
DATE OF INSTITUTION : 22.12.2020
DATE OF DECISION : 20.01.2021

DEPUTY COMMISSIONER, ORAKZAI AND ONE ANOTHER
.....(APPELLANTS)

-VERSUS-


MST. GUL KHAPERAYI W/O EID MAAN SHAH, R/O GAAL GHILJO,
TEHSIL ISMAILZAI, DISTRICT ORAKZAI
..... (RESPONDENT)

Present: Mr. Akbar Ali, Government Pleader.
: Shaheen Muhammad Advocate for respondent

JUDGEMENT
20.01.2021

In the suit before the trial court, respondent/plaintiff claimed the recovery of Rs. 400,000/- as compensation on account of destruction of her house due to military operations in the area. It was her contention that she remained IDPs (internally displaced person) for a period of ten years and upon return to her house, she found the same completely destroyed. That, the Federal Government for rehabilitation of the IDPs started a program with the name of Citizens Losses Compensation Program (CLCP) in order to compensate the IDPs whose houses have been partially or completely damaged during the military operation. That, on the basis survey conducted by the committee constituted under CLCP, the plaintiff was issued registration form no. 96203 on 30.05.2018 but even then, no payment was made to her. Hence, the suit before the trial court.

2. The appellants/defendants by submitting written statement claimed that the compensation amount in respect of plaintiff's house



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has been paid to her son, Imtiaz besides during the verification process the house under consideration was proved to be the ownership of one, Gul Zaman brother-in-law of the plaintiff who was a criminal and blacklisted by the Pakistan Army. Hence, the claim of the plaintiff was turned down upon the verification.

3. The pleadings of the parties were reduced to certain issues whereupon the parties produced evidence and after hearing arguments of both the counsel for the parties, the learned trial court decreed the suit of the respondent/plaintiff as prayed for. Hence, the appeal in hand.

4. Arguments heard and record perused.

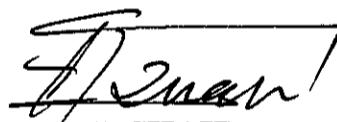
5. From the arguments and record available on file, it reveals that the respondent/plaintiff claimed the suit amount as per policy of the Federal Government, however, the Federal Government has not been arrayed necessary party in the suit before the trial court besides under section 80 of the CPC, before instituting a suit against government, notice in writing of at least two months is necessary to be given to the government which is not done in the instant case. In the written statement the said plea was taken, however neither any issue to this effect was framed nor any finding regarding the legal effect of the same was given by the trial court. Moreover, the evidence is also deficient as to the fact that when admittedly the registration form of the respondent/plaintiff was cancelled during the verification, then who was next competent authority to redress the question pertaining to the registration of the respondent/plaintiff. The grant of relief on the basis of rejected form is also questionable. The counsel for the parties have also not assisted the trial court on the question that


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whether violation of the Government Policy can be made applicable through civil courts. The evidence with regard to payment to the plaintiff through her son in respect of her house is also not available on the case file. Therefore, unless and until the said issues are addressed, the decision of the case on merit is not possible.

6. Therefore, in the light of above, appeal in hand is accepted, impugned judgement and decree of the trial court alongwith findings on the suit issues are set aside and the case is remanded back to the trial court where the Federal Government through Federal Secretary shall be arrayed as necessary party by submitting amended plaint whereafter the trial court to decide the case in accordance with law by addressing the questions raised in para 5 of this judgement alongwith other factual and legal queries of the parties. No order as to cost. Parties and their counsel are directed to appear before the trial court on the date fixed as 27.01.2021.

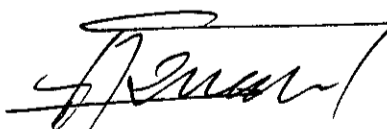
Announced
20.01.2021


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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: 20.01.2021


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