

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

CIVIL APPEAL NO. : 8/13 OF 2020
DATE OF INSTITUTION : 23.12.2020
DATE OF DECISION : 19.02.2021

SAID MARJANA S/O DOST ALI, CASTE MAMOZAI, TAPA ADO
KHEL, WALI KHEL, TEHSIL UPPER, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-


FAZAL MUHAMMAD S/O SHER MUHAMMAD, R/O AKHEL,
TEHSIL UPPER, DISTRICT ORAKZAI AND TWO OTHERS

..... (RESPONDENTS)

Present: Abid Ali Advocate for appellant.
: Shaheen Muhammad Advocate for respondents no. 1 and 2

JUDGEMENT
19.02.2021


In the suit before the trial court, appellant/plaintiff through suit for declaration, perpetual and mandatory injunction claimed the ownership of the suit house. The suit was contested by the respondents/defendants by submission of written statement. The trial was in progress wherein the appellant/plaintiff was asked time and again to produce evidence but upon failure to do so, the learned trial court/Civil Judge-I Orakzai resorted to the penal provisions of the CPC and by striking off the right of production of evidence, dismissed the suit vide impugned judgement and decree dated 24.11.2020, hence the appeal in hand.


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2. Arguments heard and record perused.

3. From the arguments and record available on file, it reveals that the penal provisions of the CPC under order 17 rule 3 of the CPC vide which the suit of the appellant/plaintiff has been dismissed is reproduced below for ready reference;

“3. Court may proceed not withstanding either party fails to produce evidence, etc.-- Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.”

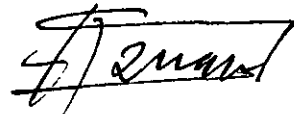

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4. The bare perusal of the above provision of law reveals that the court in case of non-production of evidence would proceed to decide the suit forthwith. In the instant case, the ownership of the suit house was disputed before the trial court and upon failure of the appellant/plaintiff to produce evidence when her right of production of evidence was struck down, then the trial court was supposed to have had granted opportunity of evidence to the defendants to prove the ownership of the suit house in their favour which was not done as such it can be held safely that the trial court has disposed of the matter but has not decided the suit. The ownership of the disputed house remained

undecided on the part of trial court. Thus, the very impugned judgement and decree of the trial court is not sustainable.

5. Thus, without touching the other merits of the case, appeal in hand is accepted, impugned judgment and decree of the trial court dated 24.11.2020 stand set aside. The case is remanded back to the trial court where the parties should appear on 27.02.2021 and the trial court is directed to record evidence of the parties with regard to the ownership of the suit house by providing single opportunity of evidence to the appellant/plaintiff as she has already availed sufficient time and thereafter to decide the case in accordance with law. No order as to cost. File of the trial court be returned while file of this court be consigned to Session Record Room after its completion and compilation.

Announced
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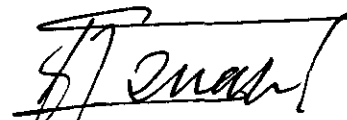


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CERTIFICATE

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

Dated: 19.02.2021



(ASGHAR SHAH)
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