

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

CIVIL APPEAL NO. : 13/13 OF 2021  
 DATE OF INSTITUTION : 21.01.2021  
 DATE OF DECISION : 19.02.2021

BISMILLAH KHAN S/O HASSAN KHAN, CASTE MALAKHEL, TAPA CHARKHA KHEL, GHILJO, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

QASIM GUL S/O SHAH WALI KHAN, CASTE MALAKHEL, VILLAGE MALALAYE WAWOOT MELA, GHILJO, DISTRICT ORAKZAI AND FIVE OTHERS

..... (RESPONDENTS)


**Present:** Abid Ali Advocate for appellant.

: Sana Ullah Khan Advocate for respondents

**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 premises to the extent of 2/3 share to which the respondents/defendants have got no concern. It was claimed that the respondents/defendants are illegally cutting the precious trees grown in the said premises and despite their request, the respondents/defendants refused either to accept the appellant/plaintiff as owner or to stop the illegal cutting of trees. The suit was contested by the respondents/defendants by submission of written statements. The trial was in

  
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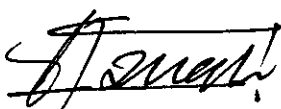
progress wherein on 03.10.2020, the trial court directed the appellant/plaintiff for impleadment of all owners as necessary party by submitting amended plaint but despite availing more than two-month time, the said directions were not complied with thereby compelling the trial court to resort to the penal provisions of the CPC enumerated under order 17 rule 3 of the CPC and resultantly the suit was dismissed through order dated 21.12.2020, hence the appeal in hand.

2. Arguments heard and record perused.
3. From the arguments and record available on file, it reveals that at the very outset it is necessary to mention here that when the case is decided under order 17 rule 3 of the CPC, the decision of the trial court is amounts to a decree and the aggrieved party can either file an appeal or apply for review. Reliance is placed upon PLD, 1981 SC page 474 and 1989 CLC page 1677. In the instant case no decree sheet has been drawn by the trial court. Though under order 41 of the CPC it is the decree and not the judgement which is appealable. As such the very order of the trial court is defective and not sustainable.
4. Thus, without touching the other merits of the case, appeal in hand is accepted, order of the trial court dated 21.12.2020 stand set aside. The case is remanded back to the

  
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trial court where the parties should appear on 27.02.2021 and the trial court is directed to decide the case in accordance with law by providing single opportunity of submitting amended plaint to the appellant/plaintiff as he has already availed sufficient time. 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.

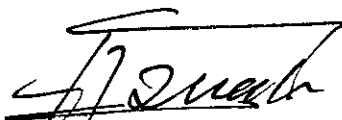
**Announced**  
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**CERTIFICATE**

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

  
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at Baber Mela