

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

MISC. CIVIL APPEAL NO. : 3/14 OF 2020
DATE OF INSTITUTION : 21.12.2020
DATE OF DECISION : 10.02.2021

HAJI MEENA GUL S/O LEEWAN SHAH, CASTE STORI KHEL,
KHARA SHAH, TAPA MULA KHEL, KHWA DARA LOWER
ORAKZAI, DISTRICT ORAKZAI AND TWO OTHERS

.....(APPELLANTS)

-VERSUS-

MUHAMMAD HASSAN KHAN S/O JAVID HASSAN KHAN, CASTE
SULTAN ZAI, TAPA ABDUL AZIZ, BHANA MARI, PESHAWAR
CITY AND FOUR OTHERS


..... (RESPONDENTS)

Present: Malik Hamid Khan Afridi and Ihsan Ullah Khan Advocates
for appellants
: Arbab Muhammad Asif, Arbab Yasir and Arbab Salman
Advocates for respondents

JUDGEMENT
10.02.2021

The appeal in hand is preferred against the order dated 19.09.2019 of the learned Civil Judge-I, Orakzai whereby the case was held past and closed transaction and the case was disposed of accordingly. Besides the above order, the appellants have also challenged through the instant appeal the order dated 22.12.2020 of the learned Senior Civil Judge, Orakzai whereby the execution petition was held maintainable.

2. The case has got a chequer history. As per record available, the respondents/decree holders approached the court of Tehsildar Lower Orakzai in the year 2006 claiming


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the ownership of the suit property, however, the matter was decided under the FCR (the prevailing law by that time) against the decree holders. It was on 05.09.2016 when the APA Lower Orakzai set aside the order of Tehsildar Lower Orakzai and constituted a fresh jirga for the resolution of the matter. The jirga members submitted their verdict in favour of decree holders and the same was accepted by the AC Lower Orakzai on 23.10.2018 and in pursuance thereof decree was passed in favour of the decree holders on 28.10.2018 by AC Lower Orakzai in case no. 2322/AC/L dated Kalaya, the October 28th, 2018. Thereafter, an application for execution of the decree was submitted to the AC Lower Orakzai but vide order dated 30.11.2018, he refused to assume the jurisdiction on account of the FCR being repealed on account of 25th Constitutional Amendment and the FIGR (FATA Interim Governance Regulation) being suspended.

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3. After the establishment of regular civil courts in District Orakzai in March, 2019, the case no. 2322/AC/L dated Kalaya, the October 28th, 2018 was transferred to the court of SCJ, Orakzai who entrusted the same to CJ-II, Orakzai who vide order dated 19.09.2019 held that the matter is already decided by the lawful authority and the same is past and closed transaction and anybody aggrieved from the same may approach the proper forum for remedy. The

appellants/judgement-debtors neither challenged the decretal order of the AC Orakzai dated 28.10.2018 nor that of Civil Judge-II, Orakzai dated 19.09.2019 within 30 days as such both the said orders have got finality. The challenging of order dated 19.09.2019 after more than one year in December, 2020 without any application for condonation of delay and citing any reason for the delay is not maintainable.


4. The appellants challenged the second impugned order of the SCJ, Orakzai dated 22.12.2020 on the grounds of the decretal property not being specified, the suit being not filed in representative capacity, all the necessary parties have not been impleaded in the suit and that the order of the AC, Lower Orakzai dated 28.10.2018 was passed after passing of 25th Constitutional Amendment as such the decree being quorum non judice is not maintainable. Be as the case may be, it is note worthy that the land by the name of "Khrasha" was claimed and the same was decreed in favour of the decree holders as such the land is very much specified but even if the executing court feel any difficulty in ascertaining the specification of the land, the executing court can adopt any legal course to identify the same or through the elders of the jirga on whose verdict the decree was passed. Secondly, the suit being not filed in representative capacity or the parties were not impleaded are the questions relating to the main suit which has already been decided and gain the finality on



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account of filing no appeal on behalf of appellant/judgment-debtors besides by that time the CPC was not applicable and the FCR was the law of the land. Moreover, in the execution before the executing court, the matter under section 47 of the CPC is only to determine the execution, discharge or satisfaction of the decree and not to open the decided matter through decree. Lastly, the order of the AC Lower Orakzai dated 28.10.2018 was passed when the FIGR was in field and in the judgment passed in writ petition no. 3098-P/2018 dated 30.10.2018 titled "Ali Azim Afridi VS Federation of Pakistan and others" it was held in the last para of the same that after one month from the date of judgment any decision of civil or criminal nature by the executive authorities would be void ab-initio. As such the order dated 28.10.2018 being prior to the above cited judgment of the Peshawar High Court Peshawar and is well within the powers of the AC Lower Orakzai under the prevailing law of the time, which was never appealed against.

5. Nothing was pointed out that either the impugned orders of the sub-ordinate courts were illegal or without jurisdiction or suffering from any other legal infirmity. Thus, nothing exists to justify interference in the impugned orders of the sub-ordinate courts, hence the same are upheld and appeal in hand resultantly stand dismissed being meritless.


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Parties to bear their own cost. File be consigned to record room after its necessary completion and compilation.

Announced

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CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

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