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PROVINCIAL GOVERNMENT ETC. VS TOOR KHAN ETC.
CA no. 11/13 (NEEM) of 11.05.2023

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 11/13 (NEEM) OF 2023
DATE OF INSTITUTION : 11.05.2023
DATE OF DECISION : 19.07.2023

1. PROVINCIAL GOVERNMENT KHYBER PAKHTUNKHWA THROUGH COLLECTOR DISTRICT ORAKZAI
2. XEN PUBLIC HEALTH DEPARTMENT DABORI ORAKZAI
3. SDO DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. TOOR KHAN S/O HAIDER KHAN
2. SAIL BADSHAH S/O HAKEEM BADSHAH BOTH R/O KASKI ZAR, PO GHILJO TEHSIL UPPER ORAKZAI
3. CONTRACTOR MUHAMMAD QASIM S/O LELAM KHAN, R/O ASCAR KALAY, DABORI, DISTRICT ORAKZAI

.....(RESPONDENTS)

Present: District Attorney Mr. Fayyaz for appellants
: Mr. Khursheed Alam Advocate for respondents
: Abid Ali Advocate for petitioners Hayat Ullah and others

JUDGEMENT
19.07.2023

Impugned herein is the judgment/decree dated 14.04.2023 of learned Civil Judge-I, Orakzai vide which suit of the plaintiffs/respondents has been partially decreed to the extent of restraining the defendants/appellants from passing the water supply line through fields of the plaintiffs/respondents.

- (2). The plaintiffs/respondents through a civil suit before the learned trial court sought declaration and permanent injunctions to the fact that they are owners in possession of the suit property measuring 15 Jeerabs situated at Moza Kaski Zar village while the appellants/defendants having got no concern whatsoever with the suit property, are bent upon making interference by passing a water supply pipeline

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without the permission of the plaintiffs/respondents causing damage to their agricultural property. The appellants/defendants were summoned out of whom defendants no. 1, 3 and 4, the present appellants appeared before the learned trial court and contested the suit while defendant no. 2, the present respondent no. 3, was proceeded ex-parte. The defendants no. 1, 3 and 4, the appellants submitted written statement wherein they besides raising various legal and factual objections, contended that they are not going to damage the agricultural property of the plaintiffs/respondents and that the water supply scheme has already been initiated on 14.05.2019 for village Mazari Garhi which has almost been done in 2021 except laying of the water supply pipeline. Pleadings of the parties were culminated into the following issues;

- I. Whether plaintiffs have got a cause of action?
 - II. Whether plaintiffs are estopped to sue?
 - III. Whether the plaintiffs are entitled to take benefits of the water supply scheme in question?
 - IV. Whether the plaintiffs are owners in possession of the suit property?
 - V. Whether the defendants are passing water pipeline on agricultural land of the plaintiffs, which will adversely affect the same?
 - VI. Whether the plaintiffs are entitled for the decree as prayed for?
 - VII. Relief.
- Parties were given opportunity to produce evidence.

Accordingly, plaintiffs/respondents no. 1 and 2 appeared in

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the witness box as PW-1 and PW-2 while produced Noorang Khan as PW-3. On the other hand, appellants/defendants rely upon sole statement of DW-1, Afsar Ali SDO District Orakzai in support of their contention.

(4). The learned trial court, after having heard the arguments, partially decreed the suit of the plaintiffs/respondents to the extent of permanent injunctions, restraining the defendants/appellants from passing of a water supply pipeline through the property of the plaintiffs/respondents. Defendants/appellants, being aggrieved of the impugned judgment/decree, filed the instant appeal.

(5). The case was fixed for final arguments.

(6). Petitioners Hayat Ullah, Muhammad Hayaz, Sial Muhammad Khan and Gulab Khan submitted application for their impleadment in the panel of defendants on the ground, that they are necessary parties to the suit. The appellants through District Attorney conceded the application while the plaintiffs/respondents contested the application and submitted written reply.

(7). I heard arguments on main appeal as well as on application of the petitioners Hayat Ullah and others and perused the record. The learned counsel for plaintiffs/respondents also submitted written arguments which are placed on file.


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circumstances, as no effective decree could be passed without the petitioners being on the panel of defendants; therefore, the application of the petitioners is genuine. Hence, without touching the merits of the case, on acceptance of the application of petitioners Hayat Ullah and others, the impugned judgement/decree of the learned trial court is set aside. The case is remanded back to the learned trial court with the directions to the plaintiffs/respondents to submit amended plaint by impleadment of the petitioners Hayat Ullah and others in the panel of defendants. Needless to mention that the learned trial court shall decide the case afresh on the basis of merits by affording opportunity of evidence to both the parties after obtaining amended pleadings. Parties are directed to appear before the learned trial court on 24.07.2023. File of this court be consigned to Record Room while copy of the same along with record of the case be sent to the learned trial court forthwith.

Pronounced
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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.

Dated: 19.07.2023


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DECREE SHEET
IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

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3. CONTRACTOR MUHAMMAD QASIM S/O LELAM KHAN, R/O ASCAR
KALAY, DABORI, DISTRICT ORAKZAI

..... (RESPONDENTS)

CLAIM OF THE APPELLANTS

Impugned herein is the judgment/decreed dated 14.04.2023 of learned Civil Judge-I, Orakzai vide which suit of the plaintiffs/respondents has been partially decreed to the extent of restraining the defendants/appellants from passing the water supply line through fields of the plaintiffs/respondents.

After hearing arguments, the below mentioned judgement is passed in the appeal of the appellants.

Order No. 07

19.07.2023


On acceptance of the application of petitioners Hayat Ullah and others, the impugned judgement/decreed of the learned trial court is set aside. The case is remanded back to the learned trial court with the directions to the plaintiffs/respondents to submit amended plaint by impleadment of the petitioners Hayat Ullah and others in the panel of defendants. Needless to mention that the learned trial court shall decide the case afresh on the basis of merits by affording opportunity of evidence to both the parties after obtaining amended pleadings.

COST OF APPEAL

Appellants	Contents	Respondents
	Cost	
	Stamp on Appeal	
	Pre-emption amount	
	Commission fee	
	Stamp of power	400/-
	Proclamation fee	
	Witness expenses	
	Court fees	
	Total	400/-

Note: Given under my hand signature and seal stamp of this court on 19th day of July, 2023.




(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela