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*In the name of almighty Allah who has got
unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-18/13 of 2023

Date of institution: 02.06.2023

Date of decision: 09.10.2023

Khana Mir and 03 others all residents of Qaum Mishti Tappa Darvi
Khel Tehsil Lower District Orakzai.

..... (**Appellant/plaintiff**)

...Versus...

Arab Gul and 04 others all residents of Qaum Mishti Tappa Darvi Khel Tehsil
Lower District Orakzai

..... (**Respondents/defendants**)

**Appeal against Judgement, Decree and Order dated 15-05-2023, passed
in Civil Suit No. 85/1 of 2020.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 15.05.2023, passed by learned Civil Judge-II, Tehsil Courts Kalaya, Orakzai in Civil Suit bearing No.85/1 2020; whereby, the suit of the appellant/plaintiff with the title of "Khana Mir etc. vs Arab Gul etc. was dismissed under Order-17 Rule-3 of Code of Civil Procedure 1908.

2. Agricultural property measuring 03 Jerib 01 Kanal, situated at Badgor of Tehsil Central District Orakzai is exclusive ownership and possession of the plaintiffs and defendants on the score of settling grudges of previous enmity are restraining them from cultivation. This was subjected in suit for declaration and perpetual injunction.

3. Defendants/respondents on appearance objected the suit on various legal as well as factual grounds in their written statement. It was specifically

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pleaded that the disputed land is ownership and possession of the defendants and suit has been filed for to harass them.

4. The divergent pleadings of the parties have been reduced into issues and plaintiffs have been asked to produce evidence. Notice under Order-17 Rule-3 of Code of Civil Procedure, 1908 was issued and on failure, the suit was dismissed which has been clutched in the contents of instant appeal.

5. Learned counsel representing appellants argued that examination of witnesses have been postponed on different reason including strike, absence of the counsel of the opponent, casual leave of learned Presiding Officer and so on. The plaintiffs are not the sole responsible for such delay and therefore the Order impugned is passed in haste without taking into consideration the reasons. The disposal has been made on technical ground and merits of the case has been ignored.

6. Learned counsel representing respondents/defendants is of the stance that plaintiffs failed to produce evidence despite considerable length of time provided. The Trial Court has rightly dismissed the suit on the score of noncompliance which is within the four corners of law.

7. The point for determination of this Court is that whether sufficient opportunities have been provided and that whether the technical ground can be converted into disposal on merits?

8. Order-17 Rule-3 of Code of Civil Procedure, 1908 empowers Court to decide case promptly if party directed by him fails to adduce evidence or bring any material on record. But the provisions being enabling in nature on one hand and discretionary on other hand requires under the law to be interpreted liberally so that the disposal on merits rather technicality shall be ensured. On

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this given criteria, the reasons mentioned for such non-production are considered sufficient cost and thus allowed in the best interest of justice. The foremost point to be addressed is that of prolongation of case for no justifiable reason but there is remedy of imposition of cost available to compensate the opposite party.


9. For what has been discussed above, appeal is allowed; consequently, the impugned Order dated 15/05/2023 is set aside with cost of Rupees 12000/- ; to be paid in two equal installments; one on 24/10/2023 and the next on succeeding date of hearing . The case is remanded back to the learned Trial Court for recording of evidence and further proceedings of the case. The appellants/plaintiffs shall appear before the learned Trial Judge on 24/10/2023 with complete evidence in hand along with the counsel to ensure recording of evidence without further delay. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court
09.10.2023


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ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon three (03) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.


Sayed Fazal Waheed,
ADJ, Orakzai at Baber Mela