

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

CIVIL APPEAL NO. : 16/13 OF 2021
DATE OF INSTITUTION : 19.03.2021
DATE OF DECISION : 23.06.2021

AJAB GUL S/O AWAL DIN, R/O CASTE BEZOT, TAPA MIR KALI
KHEL, STAR BEZOT, TEHSIL LOWER ORAKZAI
.....(APPELLANT)

-VERSUS-

IRSHAD KHAN S/O AMAN ULLAH, R/O STORI KHEL, SHIRAZ
GARHI, TEHSIL LOWER ORAKZAI
..... (RESPONDENT)

Present: Sana Ullah Khan Advocate for appellat
: Abid Ali Advocate for respondent

JUDGEMENT
23.06.2021

Impugned herein is the order dated 19.02.2021 of learned SCJ, Orakzai vide which execution petition of the appellat has been dismissed being not maintainable.

(2). Brief facts of the case are that; the present appellat vide his written application to the Assistant Commissioner,

Lower Orakzai on 13.02.2019 contended that the respondent

Irshad Khan has stolen his cattle and vide a decision of jirga annexed with the application, the respondent was held guilty but

the respondent was neither ready to return the cattle nor he was going to pay him the compensation. The application was marked

by the Assistant Commissioner to Tehsildar concerned to resolve the issue. After merger of FATA into Khyber Pakhtunkhwa, the

case file was transferred to the court of learned Civil Judge-II,

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Orakzai. The learned Civil Judge-II, Orakzai disposed of the case vide order dated: 03.09.2019 by holding that the issue between the parties was past and closed transaction, however the parties were set at liberty to adopt any legal course for redressal of their grievances. The appellant filed a petition for execution of decision of Jirga dated: 22.11.2017, which was dismissed vide impugned order of learned SCJ, Orakzai, hence the present appeal.

(3). I heard arguments and perused the record. Perusal of case file shows that on promulgation of FATA Interim Governance Regulation, 2018, the Frontier Crimes Regulation, 1901 was repealed; article 247 of the Constitution of Pakistan was omitted while article 246 of the Constitution was altered and the then FATA was brought within the limits of Khyber Pakhtunkhwa. The FIGR, 2018 was challenged before the Hon'ble Peshawar High Court, Peshawar in writ petition no. 3098-P of 2018 which was allowed vide order/judgement dated 30.10.2018 of Hon'ble Peshawar High Court, Peshawar which was assailed before the apex court but failed vide order dated 31.12.2018 of Hon'ble Supreme Court of Pakistan. After the introduction of the normal courts system to the then FATA, the questions regarding the fate of pending civil and criminal litigations and the decided civil and criminal litigations before the Deputy Commissioner, Commissioner FCR and FCR Tribunal established under the repealed FCR, 1901 (amended in

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2011) was decided vide Reference/Suo Moto no. 1-P of 2019 by the August Peshawar High Court, Peshawar wherein all the civil cases pending before the Deputy Commissioner FCR were directed to be transferred to the court of concerned SCJ. The matters which were finally decided by the courts established under repealed FCR and FIGR were declared past and closed transactions.

(4). In view of the aforementioned law on the point, after receipt of case file from the office of Tehsildar Lower Orakzai the same was entrusted to the court of learned CJ-II, Orakzai. The learned court of CJ-II, Orakzai vide its order dated 03.09.2019 declared the matter as past and closed transaction on the ground that the matter between the parties was resolved through a jirga dated 22.11.2017, however the parties were set at liberty to adopt any legal course for redressal of their grievance.

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(5). Keeping in view the aforementioned law on the point, the question involve for deciding the maintainability of execution petition in the matter is, that whether the matter was finally heard and decided by the competent forum under the FIGR. In this respect perusal of record reveals that the matter of theft of cattle of the petitioner by the respondent was brought before the Assistant Commissioner Lower Orakzai through misc. application wherein it was prayed that the respondent was held guilty in a private jirga and the AC was requested to execute the same. The application was neither submitted before the

competent forum under FIGR nor it was decided by the said forum, therefore no execution is competent to be filed on the basis of the decision of a private jirga between the parties.

(6). Hence, the impugned order of the court of learned SCJ, in the light of above discussion, is unexceptional, hence needs no interference from this court and the appeal in hand resultantly stand dismissed being devoid of force. However, the petitioner may adopt any other legal course for redressal of his grievance. No order as to cost. File of this court be consigned to Record Room while record be returned.


Pronounced
23.06.2021


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at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 23.06.2021


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