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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-10/14 of 2023**

**Date of institution: 11.07.2023**

**Date of decision: 13.10.2023**

Saleem Marjan and 06 others all residents of Qaum Rabia Khel Tappa Piyao Khel, Tehsil Ismail Zai, District Orakzai.

..... (**Appellants/defendants**)

...Versus...

Siyal Gul and 02 others all residents of Qaum Rabia Khel, Tappa Piyao Khel, Tehsil Ismail Zai, District Orakzai.

..... (**Respondents/Plaintiffs**)


**Appeal against Judgement, Decree and Order dated 04-05-2023, passed in Civil Suit No. 13/1 of 2022.**

**JUDGMENT**

Instant Civil Appeal has been preferred by the appellants/defendants against the Judgment, Decree & Order dated 04.05.2023, passed by learned Civil Judge-I, Orakzai in Civil Suit bearing No.13/1 2020; whereby, the right of evidence of the defendants in the suit titled "Siyal Gul etc. vs Saleem Marjan etc. was struck off under Order-17 Rule-3 of Code of Civil Procedure 1908.

2. Landed Property adjacent to the public road in Taari Kalay of District Orakzai is ownership and possession of the plaintiffs on the score of inheritance. The interference of defendants by way of cutting trees and construction of dwelling house is without any legal backing that necessitated presentation of suit for declaration and injunction; pending adjudication.

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

  
**SAYED FAZAL WADOOD**  
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pleaded that the disputed land is ownership and possession of the defendants on the score of valid sale transaction executed decades back.

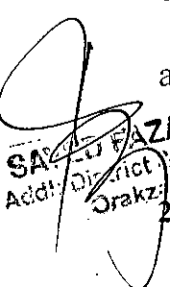
4. The divergent pleadings of the parties have been reduced into issues and plaintiffs have produced their sufficient evidence while defendants have been asked to produce evidence. Notice under Order-17 Rule-3 of Code of Civil Procedure, 1908 was issued and on failure, the right of producing evidence of the defendants was struck off which has been clutched in the contents of instant Civil Misc. appeal.

5. Learned counsel representing appellants argued that examination of witnesses have been postponed on different reason including Ramzan, absence of the counsel, nonattendance of witnesses and so on. The defendants are not the sole responsible for such delay and therefore the Order impugned is passed without taking into consideration the reasons thereof. The disposal has been made on technical ground and merits of the case have been ignored.

6. Learned counsel representing respondents/plaintiffs is of the stance that defendants failed to produce evidence despite considerable length of time provided. The Trial Court has rightly struck off the right to producing evidence to the defendants on the score of noncompliance which is within the four corners of law. However, if the respondents are being compensated, they would have got no objection on production of evidence.

7. The point for determination of this Court is that whether sufficient opportunities have been provided and that whether the technical ground requires to 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

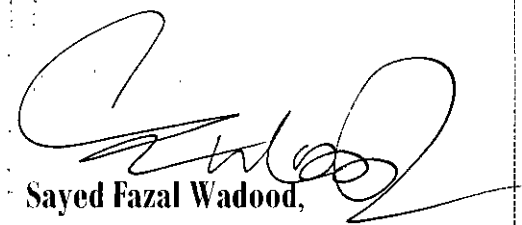
  
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hand and discretionary on other hand requires under the law to be interpreted liberally so that the disposal on merits rather on technicality shall be ensured. Similarly, counsel for respondents is not objecting as well. On this given criteria, the reasons mentioned for such non-production are considered sufficient cause 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.

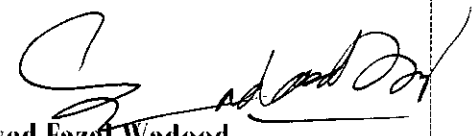
9. For what has been discussed above, appeal is allowed; consequently, the impugned Order dated 15/05/2023 is set aside with cost of Rupees 5000/-; to be paid at once; on 25/10/2023. The case is remanded back to the learned Trial Court for recording of evidence and further proceedings of the case. The appellants/defendants shall appear before the learned Trial Judge on 25/10/2023 with complete evidence in hand along with the counsel to ensure recording of evidence without further delay. As record has not been requisitioned; therefore, copy of this Judgement be sent to learned Trial Judge; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court  
13.10.2023

  
Sayed Fazal Wadood,  
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 Wadood,  
ADJ, Orakzai at Baber Mela