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

FAMILY COURT APPEAL NO. : 1/FCA OF 2021  
DATE OF INSTITUTION : 14.09.2021  
DATE OF DECISION : 12.10.2021

SURAT REHMAN S/O LAL ZARIN, R/O TARI CASTE RABIYA  
KHEL, TAPA PIYAO KHEL DISTRICT ORAKZAI AND THREE  
OTHERS

.....(APPELLANTS)

-VERSUS-

NOOR HASSAN S/O MIR HASSAN, R/O CHAPPAR MISHTI MELA,  
DISTRICT ORAKZAI

.....(RESPONDENT)

**Present:** Noor Mir Jaan Advocate for appellants.  
: Zahoor Ur Rehman Advocate for respondent

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**JUDGEMENT**  
12.10.2021

Impugned herein is the judgment and decree dated 26.07.2021 of learned Senior Civil Judge/Judge Family Court, Orakzai vide which suit of the appellants/plaintiffs for recovery of maintenance has been dismissed.

- (2). In a suit before the Court of Senior Civil Judge/Judge Family Court, appellant/plaintiff no. 1, being maternal grandfather of the appellants/plaintiffs no. 2 to 4, claimed maintenance allowance at the rate of Rs. 7,500/- each, contending that father and mother of appellants/plaintiffs no. 2 to 4 had died in 2009 and 2017 respectively; and that since 2013 the appellants/plaintiffs no. 2 to 4 are residing with the appellant/plaintiff no. 1 who bears all their expenses. The respondent/defendant contested the suit through written

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statement objecting to the claim of appellants/plaintiffs on various legal and factual grounds.

- (3). Pleadings of the parties were culminated by the learned trial court to the following issues;

Issues...

- (4). Parties were given opportunity to produce pro and contra evidence in support of their respective contentions.

- (5). Accordingly, appellant/plaintiff no. 1 remained contented with his sole statement as PW-1. On the other hand, respondent/defendant produced Noor Said Khan as DW-1, Shehzada Khan as DW-2 while attorney for the respondent/defendant appeared in the witness box as DW-3. After having heard the arguments, the learned trial court non-suited the appellants/plaintiffs. Being aggrieved of the impugned judgement and decree, the appellants/plaintiffs filed the instant

appeal.

- (6). Arguments heard and record perused. At the very outset learned counsel for the respondent/defendant objected to the maintainability of the instant appeal on the ground that the appellants/plaintiffs no. 2 to 4 are minors and they cannot sue without next friend; therefore, the instant appeal being filed without next friend, is nullity in the eyes of law. Admittedly, the appellants/plaintiffs no. 2 to 4 are minors. The law on the point is also clear that the minors cannot sue without a next friend. When the learned counsel for appellants/plaintiffs was

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confronted with the aforementioned defects in the memo of appeal and the law on the point, he frankly conceded at the bar that the instant appeal is not maintainable in its present form.


(7). With respect to merits of the case it is admitted on record that the parents of appellants/plaintiffs no. 2 to 4 are dead, appellant/plaintiff no. 1 is maternal grandfather while respondent/defendant is paternal grandfather of appellants/plaintiffs no. 2 to 4. It is also admitted on record that appellants/plaintiffs no. 2 to 4 are residing with appellant/plaintiff no. 1. However, it is evident from the record that appellant/plaintiff no. 1 is estopped to sue for maintenance allowance of appellants/plaintiffs no. 2 to 4 due to his own conduct i.e., the present respondent/defendant had filed a petition for custody of appellants/plaintiffs no 2 to 4 against the present appellant/plaintiff no. 1 which was contested by the present appellant/plaintiff no. 1 being respondent but he has not claimed any maintenance for the minors (present appellants/plaintiffs no. 2 to 4) which ought to have been made, in the previous litigation. Similarly, as is evident from the impugned judgement of the learned trial court, the appellant/plaintiff no. 1 despite fainting to have no means for upbringing of the minors, is not ready to hand over the custody of minors to respondent/defendant through his attorney. Furthermore, it is also established on the record that respondent/defendant is of extreme old age and have no means

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for payment of the maintenance of the appellants/plaintiffs no.  
2 to 4.

- (8). In light of what is discussed above, it is held that no misreading or non-reading of evidence or any other legal infirmity on the part of trial court was pointed out. Therefore, the impugned judgment and decree of the trial court is upheld and the appeal in hand resultantly stands dismissed in limini with costs. File of this Court be consigned to Record Room after its completion and compilation.

**Pronounced**  
12.10.2021

  
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**CERTIFICATE**

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

Dated: 12.10.2021



  
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