

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 11/14 OF 2023
DATE OF INSTITUTION : 20.11.2023
DATE OF DECISION : 04.01.2024

1. MALAK WAHID ALI
 2. AJMIN ALI
 3. SHAHID ALI
 4. BAHAR HUSSAIN
 5. NEKZAR ALI
- ALL R/O ANDKHEL BALA, SECTION STORI KHEL, SUB-SECITON
RAMDANI, TEHSIL LOWER, DISTRICT ORAKZAI

....(APPELLANTS)

-VERSUS-

1. AFROZ ALI
2. NOWROZ ALI
3. DILTAJ ALI
- SONS OF ZAWAR HUSSAIN
4. YADULLAH S/O TAJDAR ALI
- ALL R/O SECTION STORI KHEL, SUB-SECITON ANDKHEL BALA,
TEHSIL LOWER, DISTRICT ORAKZAI
5. CIVIL JUDGE-II, KALAYA LOWER ORAKZAI


..... (RESPONDENTS)

Present: Dr. Amir Ajam and Malak Shahzada Advocates for appellants
: Mr. Safdar Iqbal Khattak Advocate for respondents

JUDGEMENT
04.01.2024

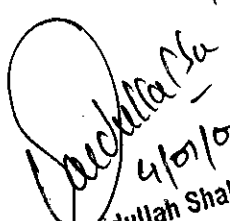
Impugned herein is the order dated 26.10.2023 of learned Civil Judge-II, Tehsil Kalaya vide which the application of the respondents/plaintiffs for grant of temporary injunctions has been allowed.

- (2). The respondents/plaintiffs through a civil suit before the learned trial court sought declaration-cum-perpetual and mandatory injunctions to the effect that both the parties are affiliated with Ramdani Family. The respondents/plaintiffs (hereinafter referred to as plaintiffs) claimed that they are the rightful owners and possessors of the suit property which consists of a house measuring 20 Marlas situated at Star


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Kaley, properties measuring 63 and 179 Marlas situated at Lalma and three plots measuring 32, 14 and 20 Marlas. It is also claimed that the suit property has been partitioned between eleven major families of Ramdani Family vide jirga dated 20.04.2022 and the appellants/defendants (hereinafter referred to as defendants) also received their due shares. The defendants, despite having got no concern whatsoever with the suit property, are bent upon making interference in the suit property by cutting trees. The defendants were summoned who appeared before the learned trial court and contested the suit by submitting their written statement wherein they raised various legal and factual objections besides claimed that the jirga verdict was rendered without obtaining their opinion. Pleadings of the parties were culminated into the following issues;

- I. Whether the plaintiffs have got a cause of action?
- II. Whether previously a private partition was effected between the parties to the suit and this plaintiffs were declared owners of the suit property, fully detailed in the headnote of the plaint, as per partition deed dated 20.04.2020?
- III. Whether defendant no. 1 is interfering with the peaceful possession of plaintiffs and further had restrained plaintiffs from plucking walnuts from the walnut trees grown up over the suit property?
- IV. Whether whole of the property owned by parties to the suit was partitioned through partition deed 20.04.2020 and further at the time of scribing partition deed the opinion of defendant no. 1 was not considered?
- V. Whether the plaintiffs are entitled to the decree as prayed for?


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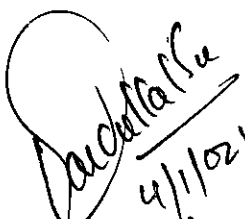
VI. Relief.

(3). The suit was accompanied by an application for grant of temporary injunctions on behalf of plaintiffs seeking the defendants to restrain from making interference in the suit property or restraining the plaintiffs from plucking walnuts from the walnut trees grown up over the suit property. The defendants contested the application and the learned trial court after hearing arguments allowed the same vide impugned order dated 26.10.2023, hence the present appeal.

(4). Arguments heard and record gone through.

(5). Perusal of the case file reveals that the partition of the suit property vide jirga dated 20.04.2020 has been admitted by both the parties; however, individuals from each of the eleven major families amongst whom the property was partitioned, dissatisfied with the jirga's decision, have filed four distinct suits before the learned trial court, each challenging the said jirga verdict on one ground or the other. The defendants also objected to the jirga verdict that the same has been passed without obtaining their opinion and sought the rejection of the plaint under Order 7 Rule 11 of the CPC for the reason that female folk of the families have not been impleaded in the suit.

The crux of the matter in these suits revolves around the fate of the jirga verdict dated 20.04.2020. Therefore, without delving into the other merits of the case, this court

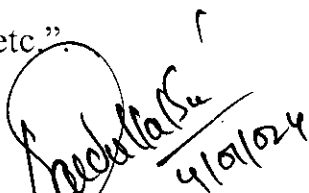

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holds the opinion that let all the pending suits challenging the above-mentioned verdict be clubbed together and a preliminary issue be framed guiding the determination of the fate of the jirga verdict dated 20.04.2020 after the presentation of evidence from each party in support and opposition.

- (6). In these circumstances, the instant appeal is disposed of with the direction to the learned trial court to club all the suits pending adjudication before the trial court, frame a preliminary issue and render its judgment after recording pro and contra evidence. Parties are directed to appear before the learned trial court on 07.02.2024.

Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court for information. Copy of this judgment also be placed on Civil Revision No. 5/12 titled as "Malak Wahid etc. VS Afroz Ali etc."

Dated: 04.01.2024

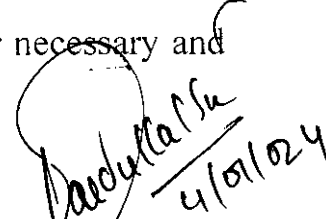

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CERTIFICATE

Certified that this judgment consists of four (04) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 04.01.2024


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