

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

MISC. CIVIL APPEAL NO. : 14/14 OF 2023  
DATE OF INSTITUTION : 13.12.2023  
DATE OF DECISION : 10.01.2024

1. SYED MUHAMMAD HUMAYUN
  2. SYED JAWAHIR HUSSAIN
  3. SYED AMIL HUSSAIN
  4. SYED SHUMAIL HUSSAIN
- ALL S/O SYED AQEEQ HUSSAIN, R/O KALAYA, LOWER ORAKZAI  
.....(APPELLANTS)

-VERSUS-

ISLAM NABI S/O GUL NABI, R/O CASTE BAR MUHAMMAD  
KHEL, KALAYA, DISTRICT ORAKZAI  
..... (RESPONDENT)

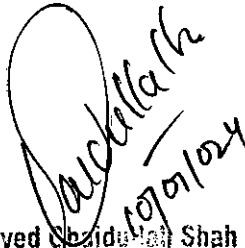
**Present:** Insaf Ali Advocate, the counsel for appellants  
: Sana Ullah Khan Advocate, the counsel for respondent

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JUDGEMENT  
10.01.2024

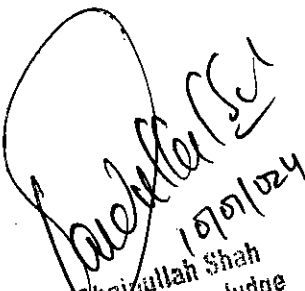
Impugned herein is the order dated 06.12.2023 of learned Civil Judge-II, Tehsil Kalaya vide which the application of appellants/plaintiffs for withdrawal of the suit with permission to file a fresh one, has been dismissed.

- (2). In a suit before the learned trial court, the appellants/plaintiffs sought declaration-cum-perpetual and mandatory injunction to the effect that they are owners in possession of the suit property measuring 05 Jeeeribs surrounded by a road to the west, the fields of Asim Nabi to the east, a dwelling of Islam Nabi to the north and the fields of Bahar Mian to the south fully detailed in the headnote of the plaint. That the respondent/defendant had tried to purchase the suit property from Syed Hajar Hussain who is

  
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not the owner of the same, upon which a jirga was constituted on 20.08.2018 and a decision was passed by the jirga on 12.09.2019 wherein the respondent/defendant was declared 'Par'. The respondent/defendant, despite having got no concern whatsoever with the suit property, are bent upon making interference in the same by erecting construction and illegally occupying it. The respondent/defendant was summoned who appeared before the learned trial court and contested the suit by submitting written reply wherein he has raised various legal and factual grounds. Pleadings of the parties were culminated into the following issues:

- I. Whether the plaintiffs have got a cause of action?
- II. Whether plaintiffs are owners in possession of the suit property comprising of 05 Jeeribs fully detailed in the headnote of the plaint since time of their predecessors and defendant has nothing to do with the same?
- III. Whether suit property was previously sold by father of plaintiffs namely Syed Aqeeq Hussain to one Syed Badshah Hussain etc. on 15.03.1991 in lieu of Rs. 115,000/- as sale consideration and subsequently said sale transaction was reversed due to Ghag made by other Syed Families and was accordingly purchased by Sadaat family and thereafter it was purchased by one Sajjad Ali in lieu of Rs. 120,000/- as sale consideration and finally defendant thereafter purchased the suit property from said Sajjad Ali for Rs. 140,000/- as sale consideration?

  
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IV. Whether the plaintiffs are entitled to the decree as prayed for?

V. Relief.

The appellants/plaintiffs submitted application for withdrawal of the suit with permission to file a fresh one, on the grounds mentioned therein which was contested by respondent/defendant. The learned trial court, after having heard the arguments, dismissed the same vide impugned order dated 26.12.2023. Appellants/plaintiffs, considering themselves aggrieved of the impugned order, filed the instant appeal.

- (3). Arguments heard and record gone through.
- (4). The contentions raised by the appellants/plaintiffs shows that they inadvertently failed to refer other jirgas held between the parties, apart from the one held on 12.06.2019 and that they also failed to provide details regarding the suit property in the plaint. That these omissions as highlighted by the appellants/plaintiffs may lead to failure of the suit. The respondent/defendant contented the application on the ground that the appellants/plaintiffs had previously submitted an application for amendment of the plaint which was dismissed by the learned trial court.

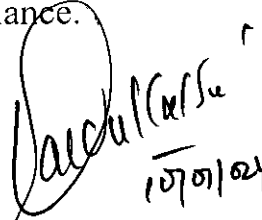
It is evident from the record that the parties do not dispute the formal nature of the identified defects. Moreover, the case is in its initial stage and no evidence has been

  
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adduced by either party. As the defects pointed out by appellants/plaintiffs are formal in nature which may lead to failure of the suit and there is no bar of withdrawal of the suit upon the appellants/plaintiffs. Consequently, the instant appeal is accepted and the impugned order passed by the learned Civil Judge-II, Tehsil Kalaya on 26.12.2023 is set aside and the application of appellants/plaintiffs for withdrawal of their suit is allowed; however, they are burdened of with a cost of Rs. 5,000/- to be deposited at the time of presentation of plaint in a fresh suit, liable to be paid to the present respondent/defendant.

Judgment announced. File of this court be consigned to record room and copy of this judgment be sent to the learned trial court for information and compliance.

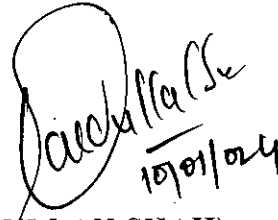
Dated: 10.01.2024

  
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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: 10.01.2024

  
(SYED OBAIDULLAH SHAH)  
District Judge, Orakzai  
at Baber Mela

