

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

CIVIL APPEAL NO. : 20/13 OF 2023
DATE OF INSTITUTION : 14.11.2023
DATE OF DECISION : 17.01.2024

1. JANAB KHAN S/O LATIF SHAH
2. ALMAR KHAN S/O AJAB KHAN
BOTH R/O CASTE MALA KHEL, TAPA QUTAB KHEL, MINAZ GARHI,
TEHSIL UPPER, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. DEPARTMENT OF C&W, DISTRICT C&W, DISTRICT ORAKZAI
THROUGH EXECUTIVE ENGINEER
2. CONTRACTOR ANWAR AFRIDI R/O PURNA SABZI MANDI OPPOSIT
TO POLICE LINE, DISTRICT KOHAT

..... (RESPONDENTS)

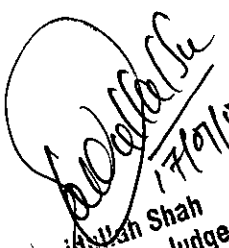
Present: Noor Karim Advocates, the counsel for appellants
: District Attorney for respondent no. 1
: Mudassir Ahmad and Abdul Rab Advocates for respondent no. 2.

JUDGEMENT

17.01.2024

Impugned herein is the judgment/decreed dated 24.10.2023 of learned Civil Judge-I, Orakzai vide which the suit of the appellants/plaintiffs has partially been decreed.


- (2). In a suit before the learned trial court, the appellants/plaintiffs sought declaration, permanent and mandatory injunction to the effect that they are owners in possession of the suit property situated at Menz Garhi District Orakzai since their forefathers as detailed in the headnote of the plaint, that a road connecting Dabori to Ghiljo was undergoing expansion, during which a portion of the appellants'/plaintiffs' land, measuring 200 Marlas, was utilized for the construction of said road. The appellants/plaintiffs also sought compensation of Rs. 50,000,000/- to be paid by the respondents/defendants. The respondents/defendants were summoned who, despite service, failed to appear before the learned trial court and were


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proceeded ex-parte. The appellants/plaintiffs were directed to produce their evidence, following which 05 witnesses were produced. Among them, the appellants/plaintiffs no. 1 and 2 appeared as PW-1 and PW-2 while the remaining witnesses were Abdul Razaq, Said Rafiq and Asif Nasim.

- (3). The learned trial court, after having heard ex-parte arguments, partially decreed the suit of the appellants/plaintiffs vide impugned judgement/decree dated 24.10.2023. The appellants/plaintiffs, considering themselves aggrieved of the impugned judgment/decree, filed the instant appeal.
- (4). Arguments heard and record gone through.
- (5). Perusal of the case file reveals that the appellants/plaintiffs have filed the instant suit for declaration, recovery of rupees fifty million, permanent and mandatory injunctions in respect of suit property. The Court of the learned Civil Judge-I, Orakzai, rendered an ex-parte decree in favour of the appellants/plaintiffs regarding the declarations and injunctions while dismissed the prayer for the recovery of money due to insufficient evidence. The appellants/plaintiffs have impugned the judgment/decree of the learned trial court solely on this basis.

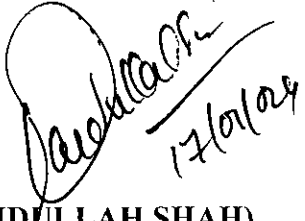
The learned counsel for respondents/defendants raised objection that the learned trial court had no pecuniary jurisdiction to entertain the suit and to pass the impugned judgment. This objection was resisted by learned counsel for


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appellants/plaintiffs by making reliance on the judgment passed by **august Peshawar High Court [Mingora Bench] reported in 2021 CLC 2042**. Since, the impugned judgment was passed ex-parte by the learned trial court, which is silent on the determination of pecuniary jurisdiction - the most important aspect of the case; therefore, without touching the merits of the case and instead of giving findings on the appeal, the impugned ex-parte judgment/decreed dated 24.10.2023 of the learned trial court is set-aside and suit in hand is remanded to the learned Civil Judge-I, Orakzai with direction to hear the parties on the point of pecuniary jurisdiction and proceed with the case as per law. Parties are directed to appear before the court of learned Civil Judge-I, Orakzai on 25.01.2024.

Judgment announced. Copy of this judgment be sent to the learned trial court for information and compliance. File of this court be consigned to record room after necessary completion and compilation.

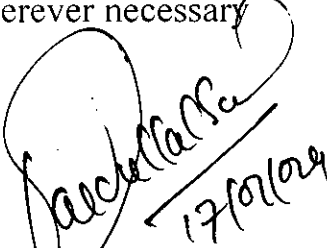
Dated: 17.01.2024


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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 17.01.2024


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