

16

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

CIVIL REVISION NO. : 2/12 OF 2022
DATE OF INSTITUTION : 24.03.2022
DATE OF DECISION : 28.04.2022

1. AYAZ ALI KHAN S/O TAJ ALI KHAN
 2. MUHAMMAD ASHRAF KHAN S/O AZMAT KHAN
 3. MUHAMMAD RAHEEL KHAN S/O AZMAT KHAN
 4. AYYUB KHAN S/O AWAL KHAN
 5. NIAZ WALI KHAN S/O MUHABBAT ALI KHAN
 6. SHAKEMAT KHAN S/O GUL MAT KHAN
 7. MUHAMMAD AYYUB KHAN S/O DASTAR KHAN
- ALL RESIDENTS OF CASTE BALAND KHEL, TAPA PALMAT
KHEL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. SHAHDEEM KHAN S/O GULBAS KHAN
 2. EID AZAD S/O GULDAD KHAN
 3. AZWAR KHAN S/O SHEEN AZAD ALIAS GODA
 4. SHER KHANDAN S/O SHADI KHAN
 5. ABDUL SALAM S/O MEWA KHAN
 6. ABDULLAH S/O MUHAMMAD JAAN
 7. SHEHZAD KHAN S/O KHADIM KHAN
- ALL RESIDENTS OF CASTE BALAND KHEL, TAPA MASTI
KHEL, DISTRICT ORAKZAI
8. MUHAMMAD RAEES KHAN S/O PEER TAHIR SHAH
 9. ABDUL SAMAD S/O BURHAN UDDIN
 10. ILHAM UDDIN S/O IBRAHIM KHAN
 11. KAMIL BADSHAH S/O ZAMEER BADSHAH
 12. SAMEEN BACHA S/O MIR SALEEM SHAH
 13. AKBAR DIN S/O ASHRAF UDDIN
 14. MOEEN UDDIN S/O WAJID SHAH
 15. PIR NAWAB KHAN S/O NASEEM SHAH DECEASED THROUGH
LEGAL HEIRS
 - a. RAZMAT BIBI (WIDOW)
 - b. MASOOM SHAH
 - c. PIR ASAD SHAH
 - d. MUZAMIL SHAH (SONS)
 - e. SHABNAM BIBI (DAUGHTER)
 16. PIR MUHAMMAD DIN SHAH S/O LAIQ SHAH R/O CASTE
BALAND KHEL, TAPA PEERAN, DISTRICT ORAKZAI
 17. GUL PAYO KHAN S/O HABIB ULLAH KHAN
 18. MUHAMMAD ROSHAN S/O MUHAMMAD AMIN
 19. MIR KAREEM JAAN S/O MUHAMMAD AKBAR JAAN
 20. OBAID ULLAH JAAN S/O HANIF JAAN
 21. ABDULLAH SHAH S/O MUHAMMAD RASOOL
 22. DILPARAZ S/O MUQADAM JAAN
- ALL RESIDENTS OF CASTE BALAND KHEL, TAPA PEERAN,
DISTRICT ORAKZAI

..... (RESPONDENTS)

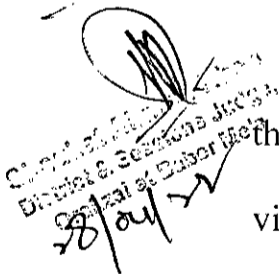
Present: Farhan Ullah and Rafi Ullah Advocates for appellants.
: Shoaib Nasrat Khel Advocate for respondents no. 1 to 7.

17

JUDGEMENT
28.04.2022

Impugned herein is the order dated 26.11.2021 of learned Senior Civil Judge, Orakzai passed in civil suit no. 31/1 vide which application of Gul Payao Khan and five (05) others has been accepted for their impleadment as defendants in the suit as representative of Caste Baland Khel.

(2). Through a suit before the trial court, the appellants/plaintiffs seek declaration and possession of the suit property on the grounds, that the respondents/defendants no. 1 to 7 have encroached 15 gaz of land transferred to the appellants/plaintiffs by respondents/defendants no. 8 to 16 as a result of demarcation between appellants/plaintiffs and respondents/defendants no. 8 to 16. That as a result of construction of a new road in the land of appellants/plaintiffs, the respondents/defendants no. 1 to 7 are bent upon occupying 08 kanals of land of the appellants/plaintiffs on one side of the road.


District & Sessions Judge
Orakzai
28/04/22

The respondents/defendants no. 1 to 7 contested the suit on the grounds, that they are owners in possession of the suit land vide sale deed no. 393 of 2019.

During the course of proceedings, Gul Payao Khan and five others submitted application for their impleadment in the suit in the panel of defendants being representative of caste Baland Khel on the grounds, that they are necessary parties to the suit.

18

The application was accepted vide impugned order of the learned trial court.

The appellants/plaintiffs, being aggrieved of the impugned order, filed an appeal before this court.

The appeal was turned down vide order 09.02.2022 of this court on the ground, that the impleaded defendants Gul Payo Khan and others, being necessary parties were not arrayed as respondents/defendants in the memorandum of the appeal. The petitioners/plaintiffs, being aggrieved of the order of this court, filed a civil revision no. 221-P/2022 which was decided vide order dated 15.03.2022 of Honourable Peshawar High Court, Peshawar vide which the petitioners/plaintiffs withdraw the said revision subject to permission of filing a fresh appeal/revision before this court after rectifying the error by impleading the newly added defendants in the panel of respondents. The request of the petitioners/plaintiffs was allowed vide ibid order of the Honourable Peshawar High Court, Peshawar.

“After arguing the case at some length, learned counsel for the petitioner stated that he would not press the instant petition on merit provided he is allowed to move a fresh appeal/revision before the learned District Judge for redressal of petitioners’ grievance, after rectifying the error by impleading the newly defendants in the panel of respondents. May do so, if so desired, subject to all legal and valid objections from the other side.

Shahidul Alam Khan
District & Sessions Judge,
District of Peshawar

28/04/22

19

In the light of above, this petition is dismissed being not pressed”.

In view of the aforementioned order of the Honourable Peshawar High Court, Peshawar, the petitioners/plaintiffs filed the instant revision petition with application for condonation of delay.

(3). I heard arguments of the learned counsels of the parties and perused the record. Learned counsel for the respondents/defendants no. 1 to 7 conceded the revision petition while respondents no. 17 to 22 (the newly added defendants) contested the same.

(4). With respect to objection regarding the limitation, the impugned order is passed on 26.11.2021 while the instant revision petition has been filed on 17.03.2022 with a delay of about 19 days, out of which the time consumed by obtaining attested copies of the record including the days of the announcement of judgments is about 06 days but still the instant revision petition is barred by time for about 13 days. The main argument of the learned counsel for the petitioners for condonation of delay is, that originally the appeal instead of revision was filed before this court within the time; however, the delay was caused due to failure of the appeal of the petitioners/plaintiffs before this court on technical ground of non-impleadment of the newly added defendants no. 17 to 22 for rectification of which the petitioners/plaintiffs have to file

78/04/22
District & Sessions Judge
Peshawar

20

revision petition before the Honourable Peshawar High Court, Peshawar. Learned counsel for the contesting respondents/defendants no. 17 to 22 submitted that choosing of wrong forum for filing appeal/revision is no ground for condonation of delay.

After having heard arguments of both the counsels for parties and after having gone through the relevant record on file, it is evident that though choosing a wrong forum for filing of appeal/revision is no ground for condonation of delay but in the instant case, as in the first round, the appeal (instead of revision) was filed before this court which was well within time and the forum was rightly chosen but due to technical error of non-impleadment of the contested respondents/defendants no. 17 to 22 the petitioners/plaintiffs were forced to file civil revision before the Honourable Peshawar Hight Court, Peshawar which was allowed; therefore, the petitioners have not chosen a wrong forum, hence for the delay caused by rectification of technical error, the petitioners/plaintiffs cannot be penalised. Moreover, it is a well settled principal of law that the cases should be decided on merits avoiding technicalities.

Sheriff
District Peshawar
28/01/22

Hence, in view of what is discussed above, the application of petitioners/plaintiffs for condonation of delay is accepted and the revision petition is held maintainable.

With respect to merits of the revision petition, as discussed above, the claim of the petitioners/plaintiffs is, that

21

respondents/defendants no. 1 to 7 are bent upon making encroachment over 08 kanals of the land of the petitioners/plaintiffs, transferred to them as a result of demarcation between petitioners/plaintiffs on one side and respondents/defendants no. 8 to 16 on other side. The claim of the contesting respondents/defendants no. 17 to 22 is, that they are representatives of the caste of Buland Khel as per list annexed with the application and they are necessary parties to the suit. However, not a single ground has been taken in the application, that as to why they are necessary parties to the suit. The learned trial court vide impugned order has maintained that all the three sets of parties i.e., the petitioners/plaintiffs, the respondents/defendants and the petitioners (the added defendants no. 17 to 22) have adverse claim of the ownership over the disputed property which can only be determined after recording of evidence. The claims of petitioners/plaintiffs and respondents/defendants no. 1 to 7 is based upon the pleading of the parties; however, it cannot be ascertained from the file that as to how the learned trial court has reached to the conclusion that the caste of Buland Khel through their representatives i.e., the respondents/defendants no. 17 to 22 have claimed the ownership of the disputed property. During the course of arguments when the learned counsel for respondents/defendants no. 17 to 22 was confronted with the aforementioned situation, he referred to copies of documents scribed in Persian language

Shaukat Ahmad Khan
District & Sessions Judge
Buland Khel
78/04/2022


22

wherein the Shamilat land of the caste of Buland Khel has been defined but even in that document he could not refer the suit property included in Shamilat.

(5). Hence, in view of what is discussed above, it is held that the learned trial court has exercised jurisdiction not vested in it; therefore, the impugned order dated 26.11.2021 of the court of Senior Civil Judge is set aside and application of respondents/defendants no: 17 to 22 for their impleadment in the panel of defendants, is turned down. File of this court be consigned to Record Room while record be returned. Copy of this judgment be sent to the trial court for information.

Pronounced
28.04.2022





(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 28.04.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela