

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

CIVIL APPEAL NO. : 16/13 OF 2023  
DATE OF INSTITUTION : 16.08.2023  
DATE OF DECISION : 11.12.2023

1. KHALID HUSSAIN S/O NAEEM JAN
2. NAVEED HUSSAIN S/O NAEEM JAN
3. SADIQ ALI S/O NOOR AHMAD JAN  
ALL R/O CASTE MANI KHEL, TAPA MIRWAS KHEL, TEHSIL  
LOWER, DISTRICT ORAKZAI

....(APPELLANTS)

-VERSUS-

1. AJMAL HUSSAIN
2. ISRAR HUSSAIN  
BOTH SONS OF MIRZA HUSSAIN, R/O CASTE MANI KHEL, TAPA  
MIRWAS KHEL, TEHSIL LOWER, DISTRICT ORAKZAI


..... (RESPONDENTS)

**Present:** Mr. Sana Ullah Khan Advocate for appellants  
: Mr. Abid Ali Advocate for respondents

**JUDGEMENT**  
**11.12.2023**

Impugned herein is the judgment/decree dated 12.07.2023 of learned Civil Judge-II, Tehsil Kalaya vide which the suit of the respondents/plaintiffs has been decreed as prayed for.

- (2). The appellants/defendants through a civil suit before the learned trial court sought declaration-cum-permanent injunction and possession in alternate to the effect that the parties are relatives inter se, that the suit property has been partitioned between the parties vide partitioned deed dated 13.01.2009 wherein the respondents/plaintiffs were declared owners of plot 'E' measuring 30 Marlas, surrounded by a house and thoroughfare of Inam to the east, a dwelling of Shafiq Hassan to the west and the houses of Gul Amir Shah and Noor Hassan to the north while the appellants/defendants

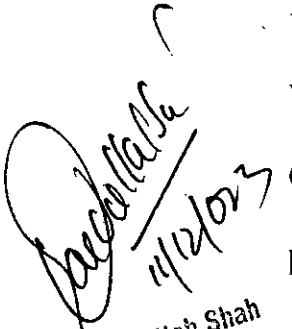
  
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were given ownership of plot 'A' as detailed in the sketch annexed with the plaint. It is also claimed that the appellants/defendants have illegally started construction over point 'F' as shown in the sketch and that they, having got no concern whatsoever with the suit property, are bent upon making construction over the same. The respondents/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. Pleadings of the parties were culminated into the following issues;

- I. Whether plaintiffs have got a cause of action?
- II. Whether plaintiffs are estopped to sue?
- III. Whether the suit of plaintiffs is time barred?
- IV. Whether plaintiffs are owners in possession of plot-E as shown in the sketch and as per the family partition deed dated 13.01.2009 and the defendants have nothing to do with the same?
- V. Whether plaintiffs are entitled to the possession of the Plot-E in the alternate?
- VI. Whether the plaintiffs are entitled to the decree as prayed for?
- VII. Relief.

(3). Parties were given opportunity to produce evidence.

Accordingly, respondent/plaintiff no. 2 appeared in the witness box as PW-1 besides produced Gul Amir Shah and Gul Hussain as PW-2 and PW-3 respectively. On the other hand, appellant/defendant no. 2 appeared as DW-1 and


  
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produced 02 other witnesses: Rihan Ali and Zulfiqar as DW-2 and DW-3 respectively.

(4). The learned trial court, after having heard the arguments, decreed the suit. Appellants/defendants, considering themselves aggrieved of the impugned judgment/decree, filed the instant appeal.

(5). Arguments heard and record gone through.

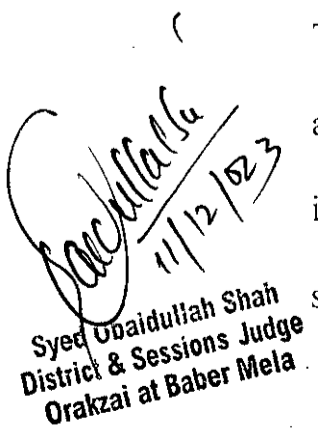
(6). Perusal of the case file reveals that according to the partition deed dated 13.01.2009 scribed at Bardarbar, four properties situated at different places have been partition amongst the parties who received their respective portion with their consent. The respondents/plaintiffs in support of their contention produced three witnesses who, in their cross examination, were consistent regarding the partition of four properties situated at four different places vide partition deed dated 13.01.2009. The testimony of PW-2 Gul Amir Shah included that he was among the shareholders and each of the party, with their own consent, received their respective portion of the property while he received the property adjacent to the road which underwent further partition between him and the appellants/defendants through a subsequent partition deed, whereupon houses have been constructed about 10/12 years ago. He affirmed the presence of the father of appellants/defendants no. 1 and 2 at the time of partition. Gul Hussain PW-3 corroborated the stance of the

  
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respondents/plaintiffs, affirming his presence during the drafting of all four partition deeds and confirming his signature on them.

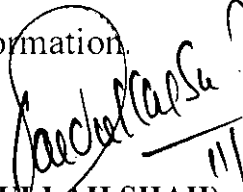
On the other hand, the appellants/defendants denied the contention of the respondents/plaintiffs and claimed that no such partition had taken place between the parties. According to the statement of DW-1 Naveed Hussain, appellant/defendant no. 2, he acknowledged three partitions among the four but objected upon the fourth partition. But in natural course of things, conceding to a singular partition among the rest is deemed not possible by a judicious perspective rather one should either accept the entirety of the partitions or reject them collectively. Moreover, the appellants/defendants have also not objected the authenticity of the partition deed dated 13.01.2009 besides claiming that a private partition was effected between the uncle of defendant no. 3 and the father of defendants no. 1 and 2; however, no documentary or oral evidence supporting this claim has been brought on the record.

- (7). In these circumstances, it is held that the learned trial court has rightly decreed the suit of the respondents/plaintiffs. The impugned judgement/decree is based upon proper appreciation of evidence available on file and needs no interference of this court. The appeal in hand resultantly stands dismissed being devoid of merits.

  
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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.

Dated: 11.12.2023

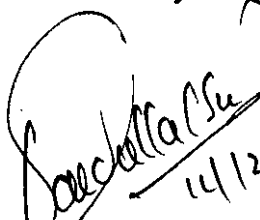
  
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**CERTIFICATE**

Certified that this judgment consists of five (05) pages.

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

Dated: 11.12.2023

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

