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IN THE COURT OF ADDITIONAL SESSIONS JUDGE ORAKZAI, AT BABAR MELA

Civil Misc. Appeal No. 1/14 of 2022

Date of institution: 25.01.2022

Date of decision: 31.05.2022

Muhammad Farid Vs Sakhi Badshah etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	31.05.2022	<p>Mr. Sana Ullah Khan Advocate for appellant and Mr. Shaheen Muhammad Advocated for respondents are in attendance. Arguments heard; whereas, this is the disposal of captioned Civil Misc. Appeal.</p> <p>2. Instant CM Appeal has been preferred by the appellant against the Judgment, Decree and Order dated 23.12.2021 passed by learned Senior Civil Judge, Orakzai in Suit bearing No.30/1 of 2021; whereby, the Court has closed evidence of plaintiff/appellant under Order 17 Rule 3 of Code of Civil Procedure, 1908.</p> <p>3. Facts are such that the plaintiff (appellant herein) has instituted a suit for declaration and mandatory injunction regarding landed property described in the plaint on the score of being owner in possession. The defendants (respondents herein) contended in written statement that they are owners in possession of the property and plaintiff has got nexus. The issue have been framed and case was scheduled for the evidence of the plaintiff vide Order No.14 dated 14.09.2021 and fixed the case for following dates.</p> <p>28.09.2021 12.10.2021 26.10.2021 09.11.2021 23.11.2021 07.12.2021.</p> <p>Plaintiff failed to produce evidence on the above mentioned dates of hearing and thus, notice under 17 Rule 3 of Code of Civil Procedure, 1908 was issued to the plaintiff. The plaintiff has produced two witnesses examined as PW-1</p>



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District & Sessions Judge
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and PW-2 on 23.11.2021 and requested for adjournment so as to produce further witnesses. The request was turned down and the evidence of the plaintiff was considered as closed vide impugned order No. 20 dated 23.11.2021. Feelings aggrieved with the said impugned judgment/decreed and order, the plaintiff/appellant has filed instant appeal which was contested by the respondents.

4. Learned counsel for appellant argued that half of the witnesses have already been produced and rest of the witnesses if not examined would create chance of miscarriage of justice. He added that the technical knock-out of the plaintiff has been done in hurry which is against the principle of justice. It was concluded that if a single opportunity has been provided that will be sufficient for to produce complete evidence.

5. The learned counsel representing respondents opposed by stating that schedule starting from the month of September till 7th of December, 2021 comprising upon seven (07) dates of hearing have been provided to the plaintiff but he failed to produce evidence. It is protracting litigation and designed as delaying tactics. He concluded that if the appeal is allowed, there is apprehension of fractional evidence that will ultimately the fact rights of respondents.

6. The matter under adjudication closure of right of appellant to lead evidence. It is on record that time period of almost four long months has been provided with seven dates of hearing fixed with reasonable intervals. The schedule time was ending on 7th of December, 2021 but despite that, the learned Trial Judge has allowed plaintiff to produce evidence on 23rd of December, 2021; the date, on which plaintiff produced partial evidence. These facts are sufficient to establish that the content of the plaintiff was contumacious and failed to produce the evidence but still it is matter of discretion of court to be exercised in accordance with law. Order 17 Rule 3 of Code of Civil Procedure, 1908 is permissive and not mandatory. For


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Order
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being penal provision, it is required to be attracted sparingly; because, the scheme of law is that to decide the matters on merits rather than on technicalities. By giving liberal interpretation to the contents of appeal in hand, the reason mentioned therein is considered as sufficient cause; so as, to procure maximum evidence for reaching to the just conclusion of the matter in issue.

7. In the light of above discussed facts and circumstances of the case, this Court holds the view that the learned Trial Court shall provide single opportunity for production of evidence to the appellant. Consequently, instant CM Appeal is accepted with cost of Rs: Ten Thousand (10,000) and the impugned judgment and order dated 23.12.2021 of the learned Trial Court is set aside and the case is sent back on its remand to the learned Trial Court with the direction to fix a single date with no further adjournment to the appellant for producing his complete evidence at once. File of this Court be consigned to the District Record Room after necessary completion and compilation with the span allowed for; whereas, record to be returned with copy of this Order. Parties are directed to appear before the learned Trial Court on 07.06.2022 alongwith complete evidence of the plaintiff.

8. Announced in open Court.

31.05.2022

Sayed Fazal Wadood
AD&SJ, Orakzai at Baber Mela