

(8)

**IN THE COURT OF ABDUL BASIT,  
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

**Order----16**

Petitioners through representative present.

10.02.2024

Respondent no. 1 in person and respondents no. 2-5 through representative present. Respondent no. 6 has been placed ex-parte.

My this order aims to sort out whether 12 (2) CPC petition filed by Ali Ashgar son of Hussain Akbar and five others, resident of Tribe Rabia Khel, Tappa Afzal Khel, Upper Orakzai, petitioners, against Kareem Gul son of Muhammad Wazeer, Tribe Rabia Khel Tappa Afzal Khel Upper Orakzai and five others, respondents, is maintainable and the judgment, decree & order dated 08.04.2023 passed by this court is subject to set-aside or not.

On court direction, the respondent no. 1 filed written reply.

Arguments on maintainability of 12 (2) CPC petition heard.

Record perused.

Concise facts driving petitioners to file petition in hands are that on 21.05.2019, respondent no. 1 had filed civil suit no. 42/1 of 2022 of the court of learned Civil Judge-I, Orakzai, wherein, he contended that there existed 1000 acre landed property situated at Wati Tarra, Mal Kady, Goda Rabia Khel, Tehsil Ismail Zai, District Orakzai, which was ownership in possession of him and his family members/members of the Tappa; that through a private partition, he has been delivered 30 marla land including other landed property, which was in his exclusive ownership in possession; that provincial government and four other persons (defendants in main) have started constructing police piquet in the landed property of respondent no. 1 covering area of 30 marla, to be referred as suit property, without his prior permission and payment of any compensation; therefore, he has prayed for declaration of his title to the suit property and the

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Contd. 16 act of defendants to be wrong; that he has also prayed for decree for  
10.02.2024 possession of suit property on demolishing the constructions coupled  
with decree for permanent and mandatory injunctions or recovery of  
Rs. 2,100,000/- @ of Rs. 70,000/- per marla as compensation of suit  
property as an alternate relief.

Respondents no. 2-6 were summoned by learned trial court,  
who have filed written statement and contested the suit. The learned  
trial court framed the issues, parties led the evidence and finally the  
learned trial court passed a preliminary decree in favor of respondent  
no. 1 on 29.11.2022. Respondents no. 2-6 were not satisfied from  
the court verdict, so on 09.01.2023 they have filed a civil appeal no.  
03/13 of 2023 of this court that was also dismissed by my learned  
predecessor in office on 08.04.2023.

Now, petitioners have filed this application under section 12  
(2) CPC alleging the above facts with addition that they were the  
exclusive owners in possession of the suit property but respondent  
no. 1 has intentionally did not implead them in the main suit; that no  
summonses have been served on them; that respondent no. 1 has  
sought the declaration of landed property situated in Wati Tara,  
Malkada and Goda Rabia Khel and not of Mosa Mela piquet/check  
post; that house and land of petitioner no. 3 is situated adjacent to  
suit property, however, respondent no. 1 has obtained the decree by  
application of fraud, misrepresentation and keeping both the courts  
in darkness; therefore, they have prayed for setting aside the  
judgment, decree and order dated 08.04.2023 and to direct the  
learned trial court to implead them as necessary parties to the suit  
and decide the case on merits.

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Contd. 16

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Viewing the arguments advanced by learned counsel for parties and record before the court, it is held that admittedly there is no land settlement/revenue record of district Orakzai and disputes between the parties are resolved on the basis of oral evidence, possession of parties over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding this petition, the court has to base its findings on pleadings of the parties and any documentary proof, if any, brought on file. In the instant case, the courts have passed the decree in favor of respondent no. 1 on the basis of oral evidence and *jirga* decisions brought before it, however, the petitioners not only deny the ownership rights of the respondent no. 1 but assert the suit property to be their ownership in possession, wherein, house of respondent no. 3 is also constructed adjacent to the check post/piquet. Besides, in para 2 of the factual objections of the written reply, respondent no. 1 has conceded the possession of petitioners over the suit property by stating that they are occupying the suit property as his tenants. Even, he has contended that petitioners were living in his houses and admitted constructions of houses by them subject to condition that they will not institute any suit in this regard. Besides, petitioners have alleged that respondent no. 1 has been granted decree in respect of landed property situated in Wati Tarra, Malkaday Goda Rabia Khel, Tehsil Ismail Zai, Upper Orakzai, whereas, suit property is situated within the limits of Musa Khel, which are different areas, which all facts above transpires that contention raised by petitioners is sustainable and respondent no. 1 was duty bound to implead all the necessary

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Contd. 16 parties in the suit including petitioners and thus committed fraud  
10.02.2024 and misrepresentation, hence, the instant 12 (2) CPC petition is not  
only maintainable but also based on strong footings, hence, the  
same is allowed, the judgment, decree & order passed by this court  
dated 08.04.2023 in appeal no. 03/13 of 2023 confirming the order  
of learned trial court dated 29.11.2022 is set-aside and the appeal  
referred above is reopened.

Copy of this order be placed on main appeal no. 03/13 of  
2023. Parties have to bear costs of their proceedings as none of  
them have proved the costs incurred on the proceedings.

File consigned to record room after necessary completions  
and compilation.



**Announced**  
10.02.2024

**(Abdul Basit)**  
Addl. District Judge-II, Orakzai