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

Civil Appeal No. 33/13 of 2023

Date of institution: 25.11.2023

Date of decision: 03.02.2024

Date of consignment:

Sameen Shah son of Suleman Shah resident of Alwara Mela, Caste Mashiti,  
District Orakzai (appellant/plaintiff)

Versus

Safar Gul son of Ali Hasan resident of Alwara Mela, Caste Mashiti, District  
Orakzai and four others (respondents/defendants)

**APPEAL UNDER SECTION 96 OF CPC AGAINST  
THE JUDGEMENT AND DECREE OF THE CIVIL JUDGE-II,  
KALAYA, ORAKZAI**

**JUDGMENT**

Through this judgment I will decide appeal preferred by appellant against respondents challenging the judgment, decree and order dated: 26.10.2023 of the Court of learned Civil Judge-II, Kalaya Orakzai whereby he has dismissed the suit of appellant/plaintiff.

Concise facts of the case are that appellant has filed a declaratory suit against respondents alleging that landed property consisting of a house comprising of five rooms and four fields spread over an area of 4 jarib situated in Alwara Mela, boundaries are fully detailed in the headnote of the plaint, were his ancestral properties with which respondents have no concern, however, the latter have dismantled the house and made forcible possession of the landed properties, which is wrong, unfounded, against the law and facts; that he has also prayed for decree for possession through eviction of respondents coupled with decree for permanent and mandatory injunctions.

03/02/2024

Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai at Baber Mela,  
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On receipt of plaint, summonses were issued to respondents, who turned up and filed a joint written statement, wherein, raised various legal and factual objections. The divergent pleadings of the parties were reduced into different issues by the learned trial court. The evidence of appellant was in progress when the respondents filed an application for the rejection of plaint under Order VII Rule 11 Code of Civil Procedure, 1908 on ground that the plaint did not disclose a cause of action since the father of appellant was still alive. The appellant has filed written to the said application and beside this, he has also filed an application for the withdrawal of suit with permission to file fresh suit on plea that there was some formal defect in the suit. Respondents filed written reply to the application filed by appellant.

The learned trial court heard the arguments on both the applications, dismissed the application of appellant filed for withdrawal of the suit in hands, whereas, while allowing the application of respondents, rejected the plaint of appellant/plaintiff with costs of Rs. 10,000/-. The appellant being not contended with the decision, impugned herein the judgment and order dated 26.10.2023 of the court of learned Civil Judge through instant appeal with assertion that judgment and order of the learned trial court is wrong, illegal, against the law, unfounded because the appellant was an simple person, unaware of the law and had no knowledge about the fact that he could not filed the suit during the lifetime of his father; therefore, prayed that on acceptance of his appeal, the impugned judgment and order of the learned trial court may be set-aside and on restoration of the suit in hands, he may be permitted to withdraw the suit with permission to file fresh suit.

Learned counsel for respondents/defendants refuted the arguments of learned counsel for appellant/plaintiff and argued that judgment and order of the learned trial court is correct, therefore, appeal may be dismissed.

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 Abdul Basit  
 Addl. District & Sessions Judge-II  
 Orakzai at Baber Mela,  
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Arguments heard and record perused.

Viewing the arguments advanced by learned counsel for parties and record before the court, it is held that there is no denial of fact on the part of appellant that he has claimed the suit property to be his ancestral ownership despite fact that his father was alive and his legacy has not devolved on him till date; therefore, legally speaking it was right of the father of appellant to file the suit, if he so wished, and appellant was barred to file the same. So far fact that appellant was not aware of the law and Islamic provisions about raising the plea of ownership during the lifetime of his father, it is observed that ignorance of law is no excuse and appellant cannot take benefit of it; therefore, the learned trial court has rightly concluded that the plaint does not disclose a cause of action and correctly rejected the plaint with costs.

So far his arguments to allow the appeal in hands, set-aside the judgment and order of the learned trial court and allow him to withdraw the suit with permission to file fresh suit, it is held that when the plaint did not disclose a cause of action, then, neither the question of formal defect arises at all nor he can be permitted to file fresh suit on very basis. It is; therefore, observed that the learned trial court could have allowed him to withdraw the suit at the maximum but, he, still could not have been allowed to file a fresh suit due to having no disclosure of cause of action because his father was alive. It is; therefore, held that the learned trial court has committed no illegality or irregularity in passing the impugned judgment and order dated 26.10.2023, which is upheld and the appeal in hands being bereft of merits **dismissed.**

Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

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Abdul Basit  
Addl. District & Sessions Judge-II  
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The requisitioned record along with copy of this order sent to the learned trial court and file of this court consigned to record room after necessary completion and compilation.

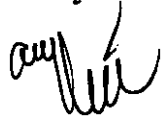


**Announced**  
03.02.2024

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

**CERTIFICATE**

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections, if any found.



**Announced**  
03.02.2024

**Abdul Basit**  
Addl. District Judge-I, Orakzai