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

Civil Appeal No. 30/13 of 2023

Date of institution: 25.10.2023

Date of decision: 31.01.2024

Date of consignment:

Syed Aalim Jan son of Mir Hasan Jan resident of Moza tazi Khel, Orakzai and ten others (appellants/plaintiffs)

Versus

Muhammad Ishaque son of Malik Jan resident of Lakki Dara Moza Tazi Khel, Orakzai and four others (respondents/defendants)

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

JUDGMENT

Through this judgment I will decide appeal preferred by appellants against respondents challenging the judgment, decree and order dated: 26.09.2023 of the Court of learned Civil Judge-II, Orakzai whereby he has dismissed the suit of appellants/plaintiffs under Order XVII Rule 3 CPC.

Brief facts of the case are that appellants have filed a declaratory suit against respondents in a representative capacity alleging that they along with other sharers and owners, as per list annexed with the plaint, were recorded owners in possession of landed property situated in moza Tazi Khel, Orakzai, fully detailed in the headnote of the plaint, and share equal liability in its profit and loss; that the suit property also consists of forests and mountains; that they were living abroad in order to get education, earnings and employments, however, respondents while taking advantage of their absence have started cutting standing trees from the forests and mountains, whereas, have also demolished three houses without any legal

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justification; therefore, prayed for decree of declaration of their title to the suit property; that they have also prayed for decree for possession provided same is not proved with them.

The respondents were summoned, however, only respondents no. 3 & 5 turned up, who have filed a joint written statement, whereas, the attendance of the remaining respondents was still awaited when the learned trial court observed that appellants have not arrayed all the necessary parties in the suit and vide order dated 30.05.2023 directed the appellants to submit an amended plaint after arraying all the necessary parties to the suit either in panel of plaintiffs or defendants as the case may be. The appellant have sought as many as four adjournments for submission of amended plaint and finally the learned trial court served them with notice under Order XVII Rule 3 Code of Civil Procedure, 1908. That in spite of serving them with the above notice, appellants have sought adjournments, however, the learned trial court allowed them an adjournment and on seeking further adjournment on next date, the learned trial court by invoking the provision of Order XVII Rule 3 Code of Civil Procedure, 1908, has dismissed their suit with costs of Rs. 5,000/- for want of submission of amended plaint.

Feeling aggrieved, the appellants have impugned the judgment and order dated 26.09.2023 with assertion that the judgment and order of the learned trial court is illegal, unfounded, against the law and against the norms of justice. He argued that the appellants have not been provided proper opportunity to file an amended plaint because his clients had gone to Iraq for ziarat. It was alleged that since precious rights of appellants are attached in the suit; therefore, prayed for setting aside the impugned judgment and order of learned trial court and to offer them last opportunity to submit an amended plaint.

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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 admittedly the appellants had earlier filed a civil suit, which was dismissed as withdrawn with permission to file fresh suit with costs of Rs. 8,000/- as evident from order sheet no. 13 dated 17.03.2023, where after, appellants have filed the suit in hands, wherein, they were directed to submit an amended plaint by impleading all the necessary parties to the suit, however, despite lapse of about four months, appellants have failed to comply the court order, which resulted in the dismissal of their suit. This is golden principle of law that the matters/issues must be resolved once for all leaving no stone unturned and the law also favors adjudication on merits than to knock it out on technical grounds. Since, the special attorney for appellants and their learned counsel not only in memorandum of appeal but also assured at the bar that a last opportunity may be granted to them to file an amended plaint, where after, the court may dismiss their suit for non-submission of an amended plaint. In view of assurance extended by special attorney for appellants and their counsel at the bar and to meet the ends of justice, it is decided that let the last and final opportunity may be afforded to the appellants to submit an amended plaint so that precious rights of the parties may be protected. In view thereof, the appeal in hands is allowed, impugned judgment and order dated 26.09.2023 of the learned trial court is set-aside with further costs of Rs. 20,000/- to be paid by appellants to contesting respondents and case is remanded to the learned trial court with direction to afford last opportunity to the appellants to submit an amended plaint, otherwise, it may decide the fate of suit as per law. Parties before the court are directed to appear ^{before} the court of learned Civil Judge-II, Kalaya, Orakzai on 17.02.2024.

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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
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CERTIFICATE

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

Announced
31.01.2024


Abdul Basit
Addl. District Judge-I, Orakzai