

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

Civil Appeal No. 32/13 of 2023

Date of institution: 13.11.2023

Date of decision: 15.02.2024

Date of consignment:

Syed Sheraz Gul son of Hasan Gul resident of Gul Dara, Tehsil Lower Orakzai, District Orakzai and six others (appellants/plaintiffs)

Versus

Shah Faisal Khan son of Aalim Khan resident of Quom Sultan Zai, Tappa Abdul Aziz Khel, Village Sultan Zai, Tehsil Lower, District Orakzai and two 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: 25.10.2023 of the Court of learned Civil Judge-II, Kalaya, Orakzai whereby he has rejected the plaint of appellants/plaintiffs under Order VII Rule 3 of The Civil Procedure Code, 1908.

Concise facts of the case are that appellants have filed a civil suit no. 23/01 of 2023 before the court of learned Civil Judge-II, Kalaya, Orakzai, wherein, alleged that village Gul Dara situated in Orakzai is spread over a vast and wide area, which is bounded by north village Sultan Zai, south village Karghar (mountain), east village Shahmar and west village Taro Tehsil Lower, District Orakzai, the suit property; that suit property is in the possession of appellants since the time of their forefathers with which other people and castes have no concern whatsoever; that their families are living

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 Addl. District & Sessions Judge-II
 Orakzai at Baber Mela,
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in their residences from the centuries and in this respect the ancestor of respondents have decided the issue between appellants and other parties in 1989 and thus acknowledged their rights in the suit property; therefore, the respondents are also bound by it; that there have been different agreements also arrived with respect to the suit property, which further strengthen their ownership rights in the suit property; therefore, appellants have prayed for decree to declare them owners in possession of suit property and that the respondents have no concern with it; that they have also prayed for decree of possession on demolition of constructions in case they were not found in possession of it; that they have finally prayed for decree for permanent and mandatory injunctions so as to restrain respondents from making any sort of interference etc. in the suit property, hence, the suit.

Respondents were summoned by learned trial court. They appeared and filed a joint written statement, wherein, raised various legal and factual objections. Respondents have also filed an application for the rejection of plaint, to which appellants filed written reply. This is to mention here that appellants while filing the suit have also filed an application for temporary injunction and separate application for condonation of delay, to which the respondents have filed respective written replies. The learned trial court heard the arguments on all applications and dismissed the applications filed by appellants, whereas, on allowing the application filed by respondents, rejected the plaint on 25.10.202. Appellants being dissatisfied with the impugned judgment and order have challenged the order by filing the civil appeal in hands with assertions that order of the learned trial court is illegal and against the law since the court has no power to decrease or increase the limitation period to file a suit; therefore, prayed that on accepting the instant appeal, judgment and order of the learned trial court may be set-aside.

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Learned counsel for respondent refuted the arguments of learned counsel for appellants and argued that learned trial court has rightly rejected the plaint because while dismissing the previous suit with permission to file fresh suit, it was specifically mentioned in the order that appellants shall file the fresh suit within a period of 30 days, whereas, they have filed the suit in hands with delay of more than four months in derogation to the court directions; therefore prayed for dismissal of appeal.

Arguments heard and record perused.

Before diverting to my findings over the case, I would first like to reproduce here Order XXIII Rule 2 of CPC, which reads as below;

2. Limitation law not affected by first suit. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

It is an admitted fact that appellants have earlier filed a civil suit no. 60/1 of 2022 before learned trial court, which was dismissed as withdrawn with permission to file fresh suit on 17.10.2022; however, the learned trial court while withdrawing the application has passed a conditional order to file the fresh suit within a period of thirty days, whereas, the appellants have filed the suit in hands with delay of more than four months. This conditional order is in sheer violation of the above referred provision of law, which explicitly provides that where the party withdraws a suit within the meaning of Order XXIII Rule 1 CPC, then, at the time of filing a fresh/ second suit, the limitation law would not be affected by institution of previous suit and it shall be deemed that first suit had not been instituted, which means that the period of limitation would run accordingly as it was previously available to him at the time of instituting the first suit.

Handwritten signature and date: 22/2/2024
Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
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There is no law of the land to empower a court either to increase or decrease the limitation period available under the law. The learned trial court has exercised its powers beyond jurisdiction and erred in passing a conditional order by postulating to file the fresh suit within a period of thirty days, which, otherwise, could affect the precious rights of opposite party/third person.

In view of my above findings, it is held that the learned trial court has erred in reaching to just conclusion of the case and hold its findings on wrong interpretation, hence, the appeal in hands is allowed, the impugned judgment and order dated 25.10.2023 is set-aside and case is remanded to the learned trial court to decide the same on merits strictly in accordance with law. Needless to mention that the court has still to look into the matter that whether appellants have filed the suit in hands within statutory period provided under The Limitation Act, 1908 from the date of accrual of cause of action to them. Parties are directed to appear before the learned trial court on **02.03.2024**. No order as to costs.

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
15.02.2024


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
15.02.2024


Abdul Basit
Addl. District Judge-II, Orakzai

DECREE SHEET

IN THE COURT OF ABDUL BASIT
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Versus

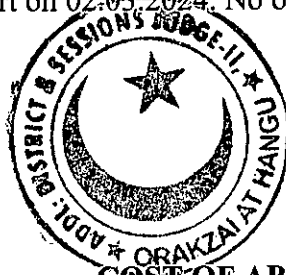
Shah Faisal Khan son of Aalim Khan resident of Quom Sultan Zai, Tappa Abdul Aziz Khel, Village Sultan Zai, Tehsil Lower, District Orakzai and two others (respondents/defendants)

Court order:

This is an appeal against respondents, whereby, appellants have challenged the judgment, decree and order dated: 25.10.2023 of the Court of learned Civil Judge-II, Kalaya, Orakzai whereby he has rejected the plaint of appellants/plaintiffs under Order VII Rule 3 of The Civil Procedure Code, 1908.

After hearing the parties, it is concluded that learned trial court has erred in reaching to just conclusion of the case and hold its findings on wrong interpretation, hence, the appeal in hands is allowed, the impugned judgment and order dated 25.10.2023 is set-aside and case is remanded to the learned trial court to decide the same on merits strictly in accordance with law. Needless to mention that the court has still to look into the matter that whether appellants have filed the suit in hands within statutory period provided under The Limitation Act, 1908 from the date of accrual of cause of action to them. Parties are directed to appear before the learned trial court on 02.03.2024. No order as to costs.

Seal of the court



(Signature)
(Abdul Basit)

Addl: District Judge-II, Orakzai

COST OF APPEAL

Appellants		Respondents
-	Stamps on memo of appeal	-
-	Service charges	-
-	Diet Money of witness	-
-	Court fee	-
-	Miscellaneous/Advertisement	-
-	Power of attorney	-
-	Total	-

Note: Counsels fee is not allowed as the required certificate under the rules has not been furnished. Given under my signature and seal of the court today 15th day of February, 2024.

(Signature)
(Abdul Basit)

Addl: District Judge-II, Orakzai