

  
**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE ORAKZAI**  
**AT BABER MELA**

Case No ..... 2/12 (2) of 2023.  
Date of institution ..... 29.03.2023  
Date of decision ..... 26.02.2024

*Mir Kareem Jan S/O Muhammad Akbar Jan R/O Biland Khel, Arkhi  
Kalay, Tehsil Ismail Zai, District Orakzai.*

.....**Petitioner**

VS

1. *Asif Shah late through*
2. *Mst Zubaida..... (widow)*
3. *Ajwa..... (daughter)*
4. *Mehreen..... (daughter)*
5. *Haima..... (daughter)*
6. *Muhammad Ayaz*
7. *Ijaz*
8. *Dil Faraz all residents of Biland Khel, Masti Khel, Jaam Garhi,  
Tehsil Upper, District Orakzai.*

.....**Respondents**

**APPLICATION UNDER SECTION 12 (2) OF CPC**

**Order. No. 28**

26.02.2024

Petitioner Mir Kareem Jan S/O Muhammad Akbar Jan R/O Biland Khel, Tehsil Ismail Zai, District Orakzai has brought the instant petition against respondents Asif Shah (deceased) through his legal heirs i.e., Respondent No. 2 to 5 and three others, U/S.12 (2) CPC, 1908 for setting aside decree and order dated 04.08.2021 on the ground of fraud and misrepresentation.

2. According to the petitioner, he is owner in possession of the suit property which devolved upon him from his predecessor namely Malak Hashim Khan. That ex-parte judgement and decree dated 04.08.2021 has been passed by this court in favour of respondents. That petitioner being

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owner of the suit property as evident from deed Ex. PW-1/3 is necessary party to the main suit titled "Asif Shah vs Mati Ullah" but he has not been arrayed by the respondents as necessary party to the suit. He has alleged that the court has been kept in dark by intentionally concealing the real facts and the ex-parte judgement and decree dated 04.08.2021 has been obtained by exercising fraud and mis representation with malafide intention. That the suit property has never been sold by him in favour of Muqadeem Jan and the scribe of deed Ex. PW-1/2 has not been produced before the court during the course of ex-parte evidence, furthermore, the deed is in Persian language which is not spoken in Pakistan. That deed Ex. PW-1/2 is fake, forged and frivolous to the extent of petitioner and his family. That statement of PW-03 Salahudin also clearly shows that present petitioner is owner in possession of the suit property and thus was necessary party to the suit. He prayed for setting aside ex-parte judgement and decree dated 04.08.2021.

3. The respondents were summoned who appeared through Abid Ali Advocate and submitted reply, wherein he alleged that the suit property is in possession of the respondents which was purchased by the father of the respondents from the petitioner some 27/28 years back and the deed was signed by the Qazi and eight Malakan. That the house of the petitioner is adjacent to the respondents and he was aware of the litigation and on 06.03.2021, he has attended the court that defendant Mati Ullah is the cousin of present petitioner. That there was no need to array the present petitioner as defendant to the said suit because he is not owner of the suit property. That after getting ex-parte decree, the execution proceedings

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have also been filed being satisfied and before the litigation, the present respondents have already constructed house on the suit property some 27 years back and during such period, no one has raised any objection. He further alleged that the scriber "Qazi" was not produced before the court because according to custom of the area, Qazi should not appear before any court. He prayed for dismissal of the application U/S 12 (2) CPC.

4. After hearing arguments, available record perused which shows that allegedly the suit property was purchased by the respondents on the strength of deed Ex. PW-1/2 which has been scribed in Persian and the Urdu translation of which is Ex. PW-1/3 which clearly shows the name of present petitioner Mir Kareem Jan as one of the owners of the suit property and there is no need for the present petitioner to prove the same because the same has been produced by the present respondents. Similarly, PW-03 Salahudin during the course of ex-parte evidence has categorically stated that present petitioner Mir Kareem Jan is one of the owners in the suit property. Deed Ex. PW-1/2 and its Urdu translation Ex. PW-1/3 also shows the names of many other owners, but astonishingly the present respondents while filing the suit for declaration and possession have neither arrayed the present petitioner as defendant to suit No. 369/1 of 2020 nor they have arrayed the other owners, whose names are mentioned in deed Ex. PW-1/2, as defendants to the suit.

The above discussion clearly shows that present petitioner Mir Kareem Jan along with co-owners was necessary party to the suit, but they have not been arrayed by the plaintiffs/present respondents as party to the suit and thus, the ex-parte decree dated 04.08.2021 is the outcome

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of fraud and mis representation and is thus not sustainable in the eyes of law. I, therefore, set aside the ex-parte judgement and decree dated 04.08.2021 by accepting the instant petition U/S 12 (2) CPC. The respondents/plaintiffs are directed to file amended plaint by arraying all the co-sharers as necessary parties to the suit. No order as to cost. Record of this petition be consigned to the record room while copy of this order be placed on the original suit for onward proceedings.

**Announced:**  
26.02.2024

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