

22

IN THE COURT OF SHAUKAT AHMAD KHAN,
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 14/13 OF 2022
DATE OF INSTITUTION : 21.10.2022
DATE OF DECISION : 27.10.2022

1. ABDUL RAZIQ S/O MUHAMMAD SADIQ
 2. ABDUL QADIR S/O KHAN MUHAMMAD
 3. JUMA GUL S/O ALI MUHAMMAD
 4. ABDUL KHABIR S/O MUHAMMAD ZARIN
 5. GULAB GUL S/O KHANI BADSHAH
 6. HAYAT GUL S/O MUHAMMAD QASEEM
 7. MUHAMMAD SHAFIQ S/O FAZAL KHALIQ
 8. NAWAZ KHAN S/O ZIBAR SHAH
- ALL RESIDENTS OF CASTE MISHTI, TAPA DARVI KHEL,
VILLAGE LEREY, TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. YAR JAAN S/O RAZA KHAN
 2. BAAD ULLAH JAAN S/O SARWAN
 3. AMAL JAAN S/O GHADAR
 4. NORMAT KHAN S/O KOCHHEY
 5. TALIB JAAN S/O TAZA KHAN
 6. KIMYA JAAN
 7. SAFAR GUL
- ALL RESIDENTS OF CASTE AKA KHEL, TAPA MAROOF KHEL,
VILLAGE PUNJGHLEY, TEHSIL CENTRAL, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present: Sana Ullah Khan Advocate for appellants.

JUDGEMENT
27.10.2022

Impugned herein is the judgement dated 21.09.2022 of learned Civil Judge-I, Kalaya vide which suit of the appellants/plaintiffs has been dismissed.

- (2). The appellants/plaintiffs sought declaration-cum-perpetual injunctions through a civil suit before the court of learned Civil Judge-I, Kalaya to the fact that they are owners in possession of the suit property detailed in the headnote of the plaint, being devolved upon them from their predecessor while the appellants/defendants, being belonging to Afridi caste, have got no concern with the suit property. The respondents/defendants were summoned but they refused to

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
27/10/22

appear before the learned trial court. Hence, they were placed and proceeded ex-parte.

The appellants/plaintiffs produced Abu Bakar s/o Sahib Gul, co-villager of plaintiffs as PW-1, appellant/plaintiff no. 1 as PW-2 and Izat Khan s/o Nawab Khan, co-villager of plaintiffs in support of their contention. All the witnesses supported the version of appellants/plaintiffs in their statements.

After having heard ex-parte arguments, the learned trial court dismissed the suit of appellants/plaintiffs. The appellants/plaintiffs, being aggrieved of the impugned judgement, filed the instant appeal.

(3). The appellants/plaintiffs also submitted application for production of additional evidence and issuance of local commission for making investigation on the spot. The application was also fixed for arguments along with the application on main appeal.

(4). I heard arguments and perused the record.

(5). It is evident from the record that none of the respondents/defendants has turned up before the trial court despite being properly served through summons and they have been

proceeded ex-parte. Similarly, when summoned by this court, they also refused to attend the court which shows the lack of interest of the respondents/defendants in the instant case. It is also evident from the impugned judgement that the appellants/plaintiffs have been non-suited on the ground, that the description of the property sufficient to identify the same has not been given either in the plaint or in the statements of witnesses of the plaintiffs and that the necessary parties have also not been arrayed in the panel of plaintiffs or defendants.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai & Baber Mela
27/1/18

24

As both the aforementioned lacunas pointed out by the learned trial court are formal in nature and cannot be counted to non-suit the appellants/plaintiffs. Moreover, the respondents/defendants have also been proceeded ex-parte and they are not interested to pursue the case and there is nothing in rebuttal.

(6) Hence, in view of what is discussed above, it is held that keeping in view the settled principles of law that the formal defects are curable in nature and cannot be counted to defeat the precious rights of the parties and that the parties must have ample opportunity to prove its case through evidence, the instant appeal is allowed. The impugned judgment dated 21.09.2022 of learned Civil Judge-I, Kalaya is set aside. The case is remanded back to the learned trial court with the directions to allow the plaintiff to amend the plaint and produce additional evidence, if any, including the issuance of local commission. Appellants/plaintiffs are directed to appear before the learned trial court on 03.11.2022. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court.

Pronounced:
27.10.2022



(SHAUKAT AHMAD KHAN
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 27.10.2022

(SHAUKAT AHMAD KHAN
District Judge, Orakzai
at Baber Mela