

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

MISC. CIVIL APPEAL NO. : 9/14 OF 2022
DATE OF INSTITUTION : 14.10.2022
DATE OF DECISION : 27.10.2022

- 1. SAMI ULLAH ALIAS ISRAEL
 - 2. AKRAM ULLAH S/O MIR AKBAR
- BOTH RESIDENTS OF CASTE MISHTI, TAPA DARVI KHEL, VILLAGE MISHTI BAZAR, TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

ISMAIL KHAN S/O MIR AKBAR, R/O CASTE MISHTI, TAPA DARVI KHEL, VILLAGE MISHTI BAZAR, TEHSIL CENTRAL, DISTRICT ORAKZAI

..... (RESPONDENT)

Present : Abid Ali Advocate for appellants.
: Sana Ullah Khan Advocate for respondent.

JUDGEMENT

27.10.2020

Impugned herein is the order dated 07.09.2022 of the learned Civil Judge-I, Kalaya vide which the right of appellant/defendant to file a written statement was struck off within the meaning of Order-VIII, Rule-10 CPC.

- (2). In a suit before the learned trial court respondent/plaintiff seeks declaration cum perpetual injunctions to the fact that he is owner in possession of the suit property detailed in the headnote of the plaint to the extent of 1/4th share being inherited by the parties from their predecessor. Appellant/respondent also seeks possession through partition of the suit property. The appellants/defendants were summoned who accordingly attended the court but failed to submit their written statement despite being given repeated opportunities; therefore, the right of appellants/defendants to submit their written statement is struck off vide impugned order, hence the present appeal.

- (3). I heard arguments and perused the record.

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

(4). It is evident from the record that the impugned order has been passed on 07.09.2022 while the instant appeal has been submitted on 14.10.2022 with a delay of about 07 days. Even the application for obtaining attested copies of the record has been filed on 12.10.2022, after expiry of the period of appeal. The appellants/defendants though have submitted application for condonation of delay but no reason has been put forward for making them incapable of filing the appeal within the prescribed limit of time, except that the appellants/defendants were unaware of the law of procedure, which is no excuse.

With respect to merits of the appeal, the suit has been filed on 31.03.2021 wherein the present appellant/defendant no. 1, being attorney for appellant/defendant no. 3, has appeared before the court on 12.06.2021 and till 07.09.2022 after about one and half year, the present appellants/defendants had not submitted their written statement which speaks volume of the appellants/defendants having slept upon their right. However, despite the indifferent behaviour of the appellants/defendants towards proceedings of the court, it is evident from the record that parties are brothers inter se, the subject matter of the suit is the property, which the respondent/plaintiff has claimed as the ancestral property of the parties, involving the precious rights of the appellants/defendants but the contention of the appellants/defendants, regarding the suit property is not available on file, in the absence of which the court would not be in a better position to reach the just conclusion of the case. The learned counsel for respondent/plaintiff when confronted with the


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

aforementioned situation, he conceded the contention of appellants/defendants subject to imposition of heavy cost and with a single opportunity to the appellants/defendants to submit their written statement on date fixed before the court.

(5). Hence, in view of what is discussed above, on acceptance of the application for condonation of delay and consequently the appeal, the impugned order dated 07.09.2022 of learned Civil Judge-I, Kalaya is set aside subject to cost of Rs. 7000/- to be deposited by the appellants/defendants in the learned trial court on date fixed with single opportunity to the appellants/defendants to submit their written statement on date fixed before the learned trial court. Copy of this judgment be sent to learned trial court for information. File of this court be consigned to record room after its necessary completion and compilation.




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