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

CIVIL APPEAL NO. : 6/13 OF 2022
DATE OF INSTITUTION : 22.06.2022
DATE OF DECISION : 05.08.2022

1. MUHAMMAD RAUF S/O MUHAMMAD RAFIQ
2. MUHAMMAD SAEED S/O MUHAMMAD KAMAL
BOTH RESIDENTS OF PAKA, CASTE MAMOZAI, TAPA ADO
KHEL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. MUHAMMAD SAJID S/O GUL SAID, R/O PAKA, CASTE
MAMOZAI, TAPA ADO KHEL, DISTRICT ORAKZAI
2. MUQADAR SHAH S/O GUL SAID, R/O UAE
3. NAZIA BIBI D/O SABIR GUL, R/O MUHAMMAD KHWAJA
CAMP, HANGU
4. SHAQIBA BIBI W/O MUHAMMAD ZIA UL HAQ, R/O SADDA,
MARGHAN, KURRAM

..... (RESPONDENTS)

Present: Syed Naeem Shah Bukhari Advocate for appellants.
: Sana Ullah Khan Advocate for appellant no. 1.
: Noor Karim Advocate for respondent no. 1.

JUDGEMENT
05.08.2022

Impugned herein is the judgement and decree dated 31.05.2022 of learned Senior Civil Judge, Orakzai vide which the suit of respondent/plaintiff has been decreed as prayed for.

- (2). In a suit before the trial court, Muhammad Sajid, hereinafter referred to as plaintiff/respondent no. 1, sought a declaration cum perpetual injunctions with possession to the fact that plaintiff/respondent no. 1 along with Muqadar Shah, Nazia Bibi and Shakiba Bibi, hereinafter referred to as proforma defendants/respondents, are owners in possession of the suit house detailed in the headnote of the plaint being inherited by them from their father Gul Said while Muhammad Rauf and

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Muhammad Saeed, hereinafter referred to as appellants/defendants, have got no concern whatsoever with the suit house. As per averments of the plaint, it was alleged that the suit house is the ancestral property of plaintiff/respondent along with proforma defendants/respondents and has remained in their possession since their forefathers. That after deterioration of the law-and-order situation in the locality, they migrated to District Hangu and after normalization of the law-and-order situation a survey of the house was made and the compensation for the damage caused to the house during operation of the Law Enforcement Agencies, was awarded to the plaintiff/respondent vide form no. 14612 of 01.09.2019 through cheque no. 39874606 in the sum of Rs. 400,000/-. That after abandonment of the house by the plaintiff/respondent, the appellants/defendants have started construction over there which is against the law, illegal, ineffective upon the rights of plaintiff/respondent and liable to be demolished at the cost of appellants/defendants.

The appellants/defendants were summoned who submitted written statement wherein besides raising various legal and factual objections they claimed that the plaintiff/respondent and proforma defendants/respondents belong to Hajam (hairdressers) family and that the suit house is the ancestral property of appellants/defendants wherein the family of plaintiff/respondent and proforma defendants/respondents was

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temporarily let to reside in lieu of their services as Hajam (hairdressers).

Pleading of the parties were culminated by the trial court into the following issues;

1. Whether the plaintiff has got a cause of action?
2. Whether the disputed house is the inherited property of plaintiff and defendants no. 3 to 5?
3. Whether disputed house is the ancestral property of defendants no. 1 and 2, which was temporarily given to the father of plaintiff due to his services for the ancestors of defendants no. 1 and 2?
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief.

Parties were given opportunity to produce evidence. Accordingly, the plaintiff/respondent produced record keeper, DC Office Orakzai as PW-1 who produced CLCP form in favour of plaintiff/respondent Muhammad Sajid, Khan Syed as PW-2, Muqadar Shah as PW-3, Fazal Badshah as PW-5 while plaintiff/respondent himself appeared in the witness box as PW-4. On the other hand, appellants/defendants examined Muhammad Rauf, one of the appellants/defendants as DW-1, Muhammad Jalil as DW-2, Shah Fahad Qureshi as DW-3 and Aziz Ur Rehman as DW-4.

After conclusion of evidence of both the parties, learned Senior Civil Judge heard the arguments and decreed the suit in favour of respondent/plaintiff. Appellants/defendants, being aggrieved of the impugned decree and judgement, filed the instant appeal.

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During pendency of the instant appeal, Muhammad Rafiq, the father of appellant/defendant no. 1 submitted application for his impleadment as necessary party and production of additional evidence in respect of jirga dated 05.08.1999 on the ground, that he is the owner of suit house and that a jirga was also held between predecessor of plaintiff/respondent and him regarding the suit house which is necessary to be brought on record for just conclusion of the case. The plaintiff/respondent submitted reply and contested the same on various legal and factual grounds.

(3). I heard arguments on the application as well as the main appeal and perused the record.

(4). Perusal of case file shows that as discussed above, as per pleadings, the plaintiff/respondent claim the suit house as his ancestral property devolved upon proforma respondents/defendants and him being successors in interest of Yar Zada. They have contended that the appellants/defendants have illegally occupied the same by making construction over there. However, as against the contention of plaintiff/respondent, the appellants/defendants also claim the suit house as their ancestral property which, during lifetime of the father of appellant/defendant, makes the petitioner Muhammad Rafiq being father of Muhammad Rauf, the appellant/defendant no. 1, as necessary party to the suit. Similarly, it has also been brought on record during evidence that a jirga has been held between Yar Zada, the predecessor of plaintiff/respondent and petitioner


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Muhammad Rafiq, which being a material document, on one hand makes the petitioner Muhammad Rafiq as one of the necessary party while on the other hand, being material evidence for just conclusion of the case, also needs to be brought on record.

- (5). Hence, in view of what is discussed above, without touching the merits of the case, the application of petitioner Muhammad Rafiq is accepted. The impugned decree/judgment is set aside. The case is remanded back to the learned trial court with the directions to decide the case afresh on the basis of merits after receiving amended pleadings of the parties and giving opportunity of additional evidence to both the parties. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to learned trial court. Parties are directed to appear before the learned trial court on 25.08.2022.




Pronounced
05.08.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 05.08.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela