

50

*In the name of almighty Allah who has got
unlimited jurisdiction over and beyond the universe.*

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Ms. Civil Appeal No. CA-06/14 of 2022

Date of institution: 15.08.2022

Date of decision: 24.08.2022

1. Khawidad Khan son of Jafar Khan
2. Gulab Khan son of Khayal Shah
3. Meena Jab Khan son of Mohabat Khan

(All residents of Qaum Meshti Tappa Char Khela, Kandi Nazar Khel, Aot Mela, Toorkot PO Ghiljo upper Orakzai).

.....
(Appellants/plaintiffs)

...Versus...

1. Ghazi Marjan son of Rehmat Gull Resident of Ghundaki Qaum Shekhan.
2. Khayal Man Shah son of Peer Badshah
3. Sharbat Khan son of Naik
4. Haji Meenadar son of Sher Haider

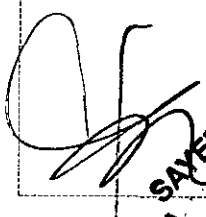
Residents of Qaum Mala Khel, Upper District Orakzai

.....
(Respondents/defendants)

**Appeal against Judgement, Decree and Order dated 26.07.2022, passed
in Civil Suit No. 30/1 of 2022.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellants/plaintiffs against the Judgment, Decree & Order dated 26.07.2022, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.30/1 of 2022; whereby, right of cross examination of the plaintiff in suit titled "Khawdad Khan etc. vs Ghazi Marjan etc. was struck off under Order-17 Rule-3 Code of Civil Procedure, 1908.



SAYED FAZAL WADOOD
District & Sessions Judge
Orakzai
21/8/2022

2. Briefly stated facts of the case are such that the plaintiffs Khawidad Khan etc. (appellants herein) have filed suit against the defendants (respondents herein) for declaration, injunction and possession of the landed property measuring 10 Jerib, situated in Tor Coat Ghiljo. The disputed property has been purchased by the predecessor in interest of the plaintiff from predecessor in the interest of defendant No. 4 to 6 in the year 1978. Later on, the person hailing from Sada Khel Qaum has disputed its ownership which was resolved in favour of plaintiffs on administration of special oath by 10 percent and thus is in exclusive ownership and possession of the plaintiffs. The defendants have restrained the process of cultivation in the property which necessitated presentation of suit.

3. Defendants/respondents on appearance objected the suit on various legal as well as factual grounds in their written statement. It was specifically pleaded that the disputed property is their ownership and the document pertaining the suited property as well as the claim of plaintiffs are baseless.

4. The material preposition of facts and law asserted by one party and denied by other have separately been put into issues by the then learned Trial Judge.

5. Opportunity of leading evidence was accorded first to the plaintiffs. They adduced evidence and on turn, defendants produced evidence in support of the specific plea taken in defense. The plaintiffs failed to cross examine the defendants' witnesses and finally the right of cross examination was struck off under Order-17 Rule-3 of the Code of Civil Procedure-1908. Feeling aggrieved, the plaintiffs presented instant Civil Appeal which is under consideration.


SAYED FAZAL WADOOD
Adml. District & Sessions Judge
Orakzai at Hangu
Page

52

6. Learned counsel representing appellants argued that his absence was due to engagements in other Courts at Kalaya and was not willful. He concluded that opportunity of cross examination may be provided to the appellants in the interest of justice and to avoid technical knockout.

7. Learned counsel representing respondents/defendants is of the stance that sufficient time has been provided for cross examination. He added that sufficient time has been provided to the appellants but they deliberately avoided cross examination of the witnesses. Further extension of time would amount to miscarriage of justice, learned counsel stated while concluding his arguments.

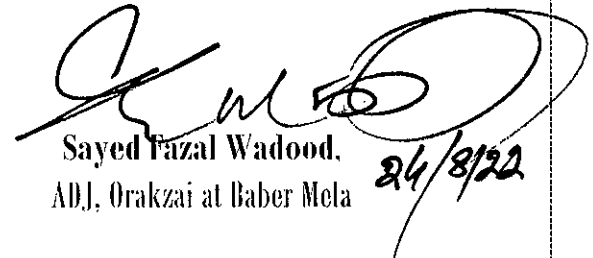
8. Order-17 Rule-3 of the Code of Civil Procedure 1908, is no doubt, provides that where any party to a suit fails to produce evidence, the Court may proceed to decide the suit forthwith; however, the provisions being penal in nature is required to be construed liberally. Similarly, law leans in favour of adjudication on merits rather technicalities. It has also been ordained in reported judgement of 1992 CLC 2515 that where valuable rights of the parties are involved, the Courts may show some indulgence. In the light of this guiding principle, lenient view is being taken by allowing the appeal in hand but with compensatory cost of Rs. 6000/- so as to compensate the respondents for being the litigation protracted without justifiable reason. It is further observed that the appellants had previously been granted sufficient time by learned Trial Judge; therefore, they are allowed single opportunity of next date of hearing i.e 07-09-2022, already fixed in the learned Trial Court with the direction of ensuring cross examination of all the witnesses. Every adjournment except in circumstances beyond the control of appellants shall


SAYED FAZAL WADOOD
Addl. District & Sessions Judge
Orakzai Hangu

be granted with cost to be determined by learned Trial Judge so as to curtail the delay.

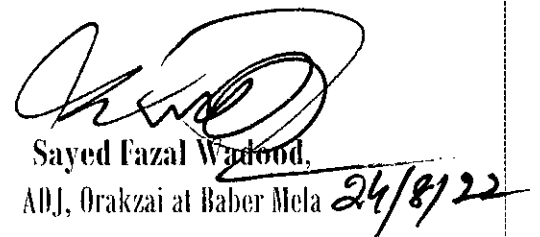
9. For what has been discussed above, appeal is allowed subject to payment of cost and Order of the Trial Court dated 26-07-2022 is set aside. The case is sent back to the learned Trial Court for recording cross examination. The parties shall appear before the learned Trial Judge on 07-09-2022 along with complete set of witnesses as the appellants have already availed sufficient time. Costs shall follow the events. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

Announced in the open Court
24.08.2022


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela 24/8/22

CERTIFICATE.

Certified that this Judgment is consisting upon four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela 24/8/22