

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

MISC. CIVIL APPEAL NO. : 10/14 OF 2022
DATE OF INSTITUTION : 07.11.2022
DATE OF DECISION : 24.11.2022

WAZIR BADSHAH S/O NIAZ BADSHAH, R/O ALI KHEL,
VILLAGE TARYE, TEHSIL UPPER, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

ISLAM BADSHAH S/O MARWAR SHAH, R/O ALI KHEL,
VILLAGE TARYE, TEHSIL UPPER, DISTRICT ORAKZAI

.....(RESPONDENT)

Present : Khursheed Alam Advocate for appellant.
: Sana Ullah Khan Advocate for respondent.

JUDGEMENT
24.11.2020

Impugned herein is the order dated 18.10.2022 of the learned Civil Judge-I, Orakzai vide which the right of appellant/defendant to submit written statement was struck off within the meaning of Order-8 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 as his ancestral property being inherited from their forefathers while the appellant/defendant having got no concern with the suit property, is bent upon making interference in the suit property. The appellant/defendant was summoned who accordingly attended the court but failed to submit his written statement despite being given repeated opportunities;

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therefore, the right of appellant/defendant to submit his written statement was struck off vide impugned order, hence the present appeal.

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


(4). It is evident from the record that the impugned order has been passed on 18.10.2022 while the suit has been filed on 11.05.2022 wherein the appellant/defendant has appeared before the court on 25.05.2022 and till 18.10.2022 after about 05 months, the appellant/defendant had not submitted his written statement which speaks volume of the appellant/defendant having slept upon his right. However, despite the indifferent behaviour of the appellant/defendant towards proceedings of the court, it is evident from the record that the subject matter of the suit is the property, which the respondent/plaintiff has claimed as his ancestral property, involves the precious rights of the parties. Moreover, in absence of the contention of the appellant/defendant, 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 aforementioned situation, he conceded the contention of appellant/defendant subject to imposition of heavy cost and with a single opportunity to the appellant/defendant to submit his written statement on date fixed before the court.

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(5). Hence, in view of what is discussed above, the appeal in hand stands accepted and the impugned order dated 18.10.2022 of learned Civil Judge-I, Orakzai is set aside subject to cost of Rs. 5000/- to be deposited by the appellant/defendant in the learned trial court on date fixed with single opportunity to the appellant/defendant to submit his 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
24.11.2022





(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: 24.11.2022


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