

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

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI

Civil Revision No. 1/12 of 2022

Date of institution: 16.08.2022

Date of decision: 29.09.2022

Sunaib: Ali son of Iswan Ali r/o Sra Mela Kurez, Teshil Lower of
District

Orakzai and 12 others.(Petitioners/Plaintiffs)

...Versus...

Syed Badshah Hussain r/o Mitha Khan, District Kohat and 05 other.

.....(Respondents/defendants)


Civil Revision against Order dated 13.08.2022 in Case No. 60/1 of 2020.

JUDGMENT

In instant Civil Revision Petition, the petitioners/plaintiffs have challenged the interlocutory order dated 13-08-2022; passed in Civil Suit No 60/1 of 2020; whereby, learned the Civil Judge-II, Tehsil Courts Kalaya, Orakzai has dismissed petition under Order-18 Rule-1 to 3 of the Code of Civil Procedure, 1908.

2. Petitioners as plaintiffs instituted suit for declaration and injunction with the stance that they are owners in possession of the landed property named Amoo Daag starting from Kaga Tang to the area of Karigar Tang. The demarcation of property has already been done by Jirga members through the medium of administration of oath on 28-06-2003; where after, the interference of defendants is amounting negation of the right of the plaintiffs that necessitated presentation of suit.

3. Respondents being defendants, contended in written statement that the predecessor in interest of the plaintiffs have sold out the disputed property


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Addl. District & Sessions Judge
Orakzai Nangu

to the predecessors in interest of defendant's decades back in the year 1932-1936. The Jirga Nama of the year 2003 was termed fabricated and fake document on the score that defendants are owners in possession of suit property and coal mining is in progress in the area since long.

4. The divergent pleading of the parties have been reduced into issues and plaintiffs have been directed to produce evidence. Meanwhile, plaintiffs presented an application that as the defendants have admitted some of the facts and thus they shall begin leading evidence. The plea so taken was declined vide impugned order which is subjected in the contents of instant Civil Revision.

5. Syed Hamza Gelani Advocate representing petitioners argued that law has given him option either to produce evidence on those issues or reserve it by way of answer to the evidence produced by the defendants. He has rightly chosen the option of reserving right of production of evidence as his half of the claim had been admitted by the defendants.


6. Mr. Abdul Qayum Advocate for respondents opposed the stance by stating that it is the plaintiff who has to begin as initial burden of proof lies on plaintiffs.

7. In light of the pleadings, material available on record and professional assistance of counsel representing parties, the right to begin being question agitated in Civil Revision is determined as following.

8. Article-117 of the Qanun-e-Shahadat Order 1984 postulates that he who asserts has to prove. Onus to prove a fact is on the shoulder of a person who raised the same and not on the opposite party. Party approaching Court

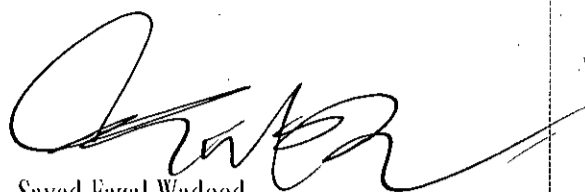
for granting relief has to discharge his own burden and when he establish the probability, then the burden shifts to the opposite party for preponderance of probability. It simply prescribes that initial burden of proving a prima facie case is on plaintiff; when he give such evidence to support a prima facie case, the onus shall be shifted to the defendants. Article-118 of the same law provides that any plea taken in defense shall be proved by the defendants as the affirmative of the issue has to be proved. Similarly, Order-18 of the Code of Civil Procedure, 1908 deals the subject of hearing of the suit and examination of the witnesses. This chapter had given plaintiff the right to begin as a matter of general rule with exception where defendants admits the facts but negate the grant of relief on point of law or on the score of some additional facts. In present scenario, the written statement of defendants is neither admission of complete facts of the plaint nor this derivative type of admission can qualify the requirements of a legal admission. This is hardly being termed an admission rather it is falling within the ambit of specific plea taken in defense and will be proved by the defendants on their own turn. Furthermore, it has been time and again settled by Hon'ble the Superior Judiciary that the plaintiff should not be allowed to reserve his right to produce affirmative evidence at the rebuttal stage as the defendant cannot be called upon to produce his evidence till completion of plaintiff's affirmative evidence. Reliance can be placed on Judgement(s) reported as 2006 YLR 130; 2000 MLD 504; and, 2007 SCMR 2858.

9. For what has been discussed above, instant Civil Revision stands dismissed being devoid of merits. File of this Court be consigned to District


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 Orakzai at Hangu

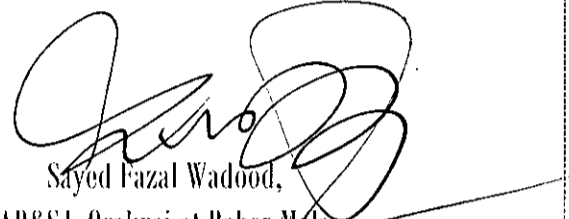
Record Room, Orakzai after necessary completion and compilation within span allowed for. Copy of this Judgement be placed on record to be returned forthwith.

10. Announced in open court
29.09.2022


Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela

CERTIFICATE

Certified that this Judgment consists of four (04) pages. Each page has been checked and signed by me after necessary corrections and read over to the parties in open Court.


Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela