

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universes*

BEFORE THE COURT OF  
ADDITIONAL DISTRICT JUDGE, ORAKZAI

**Civil Revision No. 2/12 of 2022**

**Date of institution: 07.09.2022**

**Date of decision: 05.10.2022**

Khiyal Meen son of Ali Baaz Khan and three others, r/o Qaum Mani Khel, Ahmed Khel, Tehsil Lower and District Orakzai.

.... (Petitioners/Defendants)

...Versus...

Doctor Jan Alam and two others, r/o Qaum Mani Khel, Tehsil Lower and District Orakzai.

..... (Respondents/plaintiffs)

**Civil Revision against Order dated 17.08.2022 in Case No. 13/1 of 2020.**

**JUDGMENT**

In instant Civil Revision Petition, the petitioners/defendants have challenged the validity of Order dated 17-08-2022; passed in Civil Suit No 13/1 of 2020; whereby, learned the Civil Judge-II, Tehsil Courts Kalaya, Orakzai has allowed petition of plaintiffs for production of secondary evidence of the Deed of the year 1983-85.

2. Plaintiffs instituted suit for declaration and injunction with the stance that they are owners in possession of the dwelling house and adjacent landed property measuring 15 Jerib which is spread over 17 cultivating fields situated at Fateh Konj Ahmad Khel, Kalaya Orakzai. One Itbar Khan is residing in the said dwelling house and cultivating the adjacent landed property as tenant of plaintiffs. The defendants interfered and illegally occupied 12 out of total 17 fields which necessitated presentation of suit.

  
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3. Defendants on appearance contended in written statement that the predecessor in interest of the parties had jointly acquired back the property from the illegal possession of a group named Qasaban through the medium of Jirga in 1985. They have jointly constructed the dwelling house and had handed over the house and adjacent property for cultivation to common tenant Itebar Shah. It was added that two cultivating fields out of total seventeen have been given to the third group (Qasaban). The approach path is being utilized for decades and tender has been invited for making it of plain cement concrete (PCC).

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 the Deed pertaining to the year 1983-85 and the original thereof is missing; therefore, they may be allowed to produce the same as secondary evidence. Petition was allowed vide impugned order; feeling aggrieved, the defendants subjected it in the contents of instant Civil Revision.

5. Sayyed Hamza Gelani Advocate representing petitioners argued that the Deed of the year 1985 is neither mentioned in the contents of plaint nor enlisted in the list of witnesses. He added that plaintiffs have badly failed to satisfy the learned Trial Court regarding misplacement as well as custody of the original Deed. It was concluded that this was gross illegality needs correction on part of this Court.


6. Mr. Javid Muhammad Panji Advocate for respondents opposed the ~~stances~~ by stating that ~~the~~ the Deed has been mentioned in the contents of the

  
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plaint and admitted in the written statement. The original of the Deed is not available and allowing secondary evidence was avoiding the technical knockout in the interest of justice.

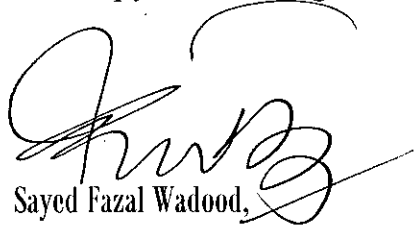
7. In light of the pleadings, material available on record and professional assistance of counsel representing parties, allowing secondary evidence being question agitated in instant Civil Revision is determined as following.

8. Article-76 of the Qanun-e-Shahadat Order 1984 deals the subject of cases in which secondary evidence relating to documents may be given. Secondary evidence is an exception to general rule and its object is to meet the genuine hardship of litigant only in the circumstances when better evidence is absent and cannot be adduced in normal circumstances. Loss of original document is an essential requirement for permission to lead secondary evidence. Allowing secondary evidence does not mean that document by itself is proved. The contents and execution of every document has to be proved in accordance with law and mere granting permission of document is exact within the preview of general object of trial that speaks to procure maximum evidence for reaching to the just conclusion of matter in issue. As for as objections of learned counsel for petitioner are concerned, the document has categorically been mentioned in the contents of pleading and the defendants have never ever been taken into surprise. Similarly, the learned Trial Court has liberally construed the sub class-c of Article-76 which is well in accordance with the scheme of Law speaking about liberal interpretation of enabling provisions.

  
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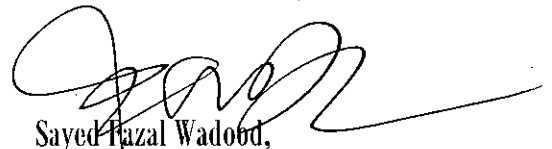
9. For what has been discussed above, instant Civil Revision stands dismissed being devoid of merits. Costs shall follow the event. File of this Court be consigned to District Record Room, Orakzai after necessary completion and compilation within span allowed for. Copy of this Judgement be placed on record to be returned forthwith.

10. Announced in open court  
05.10.2022

  
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