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

CIVIL APPEAL NO. : 13/13 OF 2022
DATE OF INSTITUTION : 19.10.2022
DATE OF DECISION : 10.11.2022

ILHAM ALI S/O IKRAM ALI, R/O CASTE MANI KHEL, TEHSIL
LOWER, DISTRICT ORAKZAI
.....(APPELLANT)

-VERSUS-

INAZ ALI S/O GUL KHAN, CASTE MANI KHEL, TEHSIL
LOWER, DISTRICT ORAKZAI
.....(RESPONDENT)

Present : Syed Hamza Gilani Advocate for appellant.
: Abdul Qayyum Advocate for respondent.

JUDGEMENT
10.11.2022

Impugned herein is the judgement and decree dated 21.09.2022 of learned Civil Judge-I, Kalaya, District Orakzai vide which suit of the respondent being plaintiff has been decreed against the appellant being defendant.

- (2). The respondent/plaintiff through a suit before the court of learned Civil Judge-I, Kalaya, Orakzai, has sought declaration-cum-perpetual injunctions and possession to the fact that the suit pathway passing through the fields of appellant/defendant and leading to the residential house of respondent/plaintiff being used by him since 2006, is owned and possessed by respondent/plaintiff. It is alleged that the respondent/plaintiff and his brother jointly purchased a land from one, Hashim Jaan and constructed a house over there in 2006, the pathway of which was passing through the rest of the property of Hashim Jaan which was later on alienated by him to the present appellant/defendant in 2012. That the father of present

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appellant/defendant when obstructed the pathway of respondent/plaintiff, a jirga was convened and the matter was resolved vide a verdict dated 31.08.2012 allowing the respondent/plaintiff to use the suit pathway free of any encumbrance and obstruction forever and the appellant/defendant was restrained from blocking/making hinderance in the pathway. The appellant/defendant was summoned who submitted written statement wherein he raised various legal and factual objections.

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

1. Whether the plaintiff has got cause of action?
2. Whether disputed path is the exclusive ownership of plaintiff?
3. Whether the plaintiff has affected an agreement with the father of the defendant through jirga verdict in year 2012 regarding the use of disputed path free of any encumbrance and obstruction forever and its affect?
4. Whether the disputed path is the only pathway for access and exit to the plaintiff's house?
5. Whether the suit of the plaintiff is competent in its present form?
6. Whether the plaintiff is entitled to the decree as prayed for?
7. Relief.

Parties were given opportunity to produce evidence. Accordingly, the respondent/plaintiff appeared himself as PW-1, Syed Haziq Ali Shah, one of the jirga members as PW-2 who

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confirmed that the jirga was held in year 2012 and Mustafa Hassan as PW-3 who is the signatory of the jirga decision Ex. PW 1/2. On the other hand, the sole witness to support the version of appellant/defendant was appellant/defendant himself as DW-1.

After conclusion of evidence of both the parties, learned Civil Judge-I, Kalaya, District Orakzai heard the arguments and decreed the suit in favour of respondent/plaintiff. Appellant/defendant, being aggrieved of the impugned decree and judgement, filed the instant appeal.


(3). I heard arguments of the counsels for parties at some length; however, during the course of arguments, counsel for respondent/plaintiff submitted application for issuance of a local commission for making investigation on the spot regarding determination of the existence of alternate pathway for the approach of respondent/defendant to his house. Counsel for the appellant/respondent, though submitted that sufficient evidence is available on file for determination of the point of alternate pathway for the approach of respondent/defendant to his house; however, he raised no objection upon the acceptance of application of respondent/plaintiff subject to remand of the case to the trial court. Counsel for the respondent/plaintiff conceded the point of appellant/respondent.

(4). Hence, in view of the mutual understanding of counsels for the parties, without touching the merits of the case, the application of the respondent/plaintiff for issuance of local

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commission is accepted. Accordingly, the impugned judgment/decreed dated 21.09.2021, passed by Civil Judge-I, Kalaya, District Orakzai is set aside and the case is remanded back to the trial court with the directions to issue a local commission for making investigation on the spot on the point of availability of alternate pathway for the approach of respondent/appellant to his house and to decide the case afresh on the basis of merits. Needless to mention that the TORs for local commission be framed by the trial court with consultation of counsels for the parties. File of this court be consigned to record room. Copy of this order along with the record be transmitted to the trial court forthwith. Parties are directed to appear before the learned trial court on 24.11.2022.


Pronounced:
10.11.2022


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CERTIFICATE

Certified that this judgment consists of four (04) pages.
Each page has been read, corrected wherever necessary and signed by me.

Dated: 10.11.2022


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