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

CIVIL REVISION NO. : 4/12 OF 2022
DATE OF INSTITUTION : 19.10.2022
DATE OF DECISION : 30.11.2022

1. MUHAMMAD HASSAN KHAN S/O JAVED HASSAN KHAN
 2. JAVED HASSAN KHAN S/O INAYATULLAH KHAN
 3. SAOOD KHAN THROUGH HIS LEGAL HEIRS
 - a) MUHAMMAD BABAR KHAN
 - b) MUHAMMAD BEHRAM KHAN
- ALL RESIDENTS OF MUHALLAH BHANI MARI PESHAWAR

.....(APPELLANTS)

-VERSUS-

1. LAL KHAN S/O SADOZAI
 2. HAJI YOUSAF KHAN S/O AITBAR KHAN
 3. NOOR MALIK S/O MEHAR DIL KHAN
 4. MUHAMMAD YOUNAS S/O GHERAT KHAN
 5. MUJEEB UR REHMAN S/O ZAFAR KHAN
 6. HAJI DALIP KHAN S/O MOMIN KHAN
 7. SAID MUHAMMAD S/O KHAN MUHAMMAD
 8. AMIN GUL S/O AHMAD GUL
 9. AMEER JAAN S/O SATTAR KHAN
 10. GHILAF GUL S/O NADAR KHAN
 11. ASHNA GUL S/O TERAH GUL
 12. TEHSEEN KHAN S/O NIAZ BAHADAR
 13. NIAZMAT KHAN S/O ABDUL AKBAR
 14. REHMAT KHAN S/O SHARBAT KHAN
 15. SAIF UL MALOOK S/O LAIR KHAN
- ALL RESIDENTS OF STORI KHEL, TAPA MULAH KHEL,
LOWER ORAKZAI, TEHSIL LOWER, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present: Muhammad Sufian Malik Advocate for appellants.
: Sana Ullah Khan Advocate for respondents.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mel
30/11/22
JUDGEMENT
30.11.2022

Impugned herein is the order dated 01.10.2022 of learned Civil Judge-I, Tehsil Court Kalaya, District Orakzai vide which petition u/s 12 (2) CPC of the respondents has been held maintainable requiring the parties to adduce pro and contra evidence.

(2). A dispute over a land of Khrasha Kalay between caste Sultanzai and caste Khawa Stori Khel was brought for resolution before the then Political Administration of ex-FATA Orakzai Agency vide various applications of Saddique, Hassan Khan, Shehzad Khan, Javid Khan, Said Wali Khan and others, the present petitioners (respondents in a petition u/s 12 (2) CPC), hereinafter referred to as petitioners/Sultanzai, wherein they claimed that they are owners of the land of Khrasha Kalay while the caste Khawa Stori Khel, the present respondents (petitioners in a petition u/s 12 (2) CPC), hereinafter referred to as respondents/Khawa Stori Khel, have forcefully occupied the same. In order to resolve the dispute, a jirga was held between the parties in the court of the then Tehsildar, Lower Orakzai and the same was decided in favour of respondents/Khawa Stori Khel in 2006; however, the said decision was set aside by the then Assistant Political Agent, Lower Orakzai and a fresh jirga was constituted in 2018 and vide order dated 28.10.2018 decree was passed in favour of petitioners/Sultanzai. The petitioners/Sultanzai filed Execution Petition which was resisted by the respondents/Khawa Stori Khel, but the objections were held not valid vide order dated 07.12.2020 of the court of learned Senior Civil Judge, Orakzai at Baber Mela against which the respondents/Khawa Stori Khel filed a Civil Appeal which was also dismissed vide order dated 10.02.2021 of this court.

Shaukat Ahmed Khan
District & Sessions Judge,
Orakzai at Baber Mela
20/11/21

(7)

The respondents/Khawa Stori Khel filed a petition u/s 12 (2) CPC and objected to the decree dated 28.10.2018 of the then Assistant Commissioner Lower Orakzai on the ground of fraud, misrepresentation to the fact that they are in actual possession of the decreed property, and during the process of constitution of fresh jirga in 2018, they were neither associated with the proceeding nor any notice was served upon them. The present petitioners, being respondents in petition u/s 12 (2) CPC, contested the same by submission of their written reply. The learned Civil Judge-I, Tehsil Court Kalaya, after hearing arguments, held the petition maintainable and required the parties to produce their pro and contra evidence. The petitioners/Sultanzai, being respondents in petition u/s 12 (2) CPC, being aggrieved of the impugned order, filed the instant revision petition.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Bahar Mela

- (3). I heard arguments of learned counsels for the parties and perused the record.
- (4). Perusal of case file shows that admittedly the present respondents/Khawa Stori Khel, being petitioners in a petition u/s 12 (2) CPC, belong to caste Khawa Stori Khel. They also claimed themselves as in actual possession of the decreed property. It is also evident from the record that the dispute between the parties over the decreed property has remained pending for about more than 13 years which has been reopened by the then Assistant Commissioner, Lower Orakzai on


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23.10.2018 and decided the same on 28.10.2018 within a short span of 05 days. Furthermore, it is also evident from the order dated 28.10.2018 that a jirga was constituted by the then Assistant Commissioner u/s 13 of the FIGR while the procedure for resolution of civil dispute is prescribed u/s 7 & 8 of the FIGR.

(5). Hence, in view of what is discussed above, it is held that the questions, as to whether the respondents are necessary parties to the dispute, that whether they have been served and associated with the process of resolution of the dispute and that whether the then Assistant Commissioner was having jurisdiction to pass the order dated 28.10.2018? or otherwise, are questions of facts and cannot be determined without recording of evidence. Therefore, the impugned order dated 01.10.2022 passed by learned Civil Judge-I, Tehsil Court Kalaya, District Orakzai, is in accordance with law and does not suffer from any legality or irregularity. Accordingly, the instant revision petition is dismissed. File of this court be consigned to Record Room while record be returned. Copy of this judgment be sent to the trial court for information.




Pronounced
30.11.2022


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

CERTIFICATE

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

Dated: 30.11.2022


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