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Said Habib VS Saifoor Khan
CA No. 10/13 of 15.09.2022

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

CIVIL APPEAL NO. : 10/13 OF 2022
DATE OF INSTITUTION : 15.09.2022
DATE OF DECISION : 28.09.2022

SAID HABIB S/O ZAR SHAH, R/O CASTE MISHTI, TAPA MAMZAI,
TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

SAIFOOR KHAN S/O ARAB SHAH, R/O CASTE MISHTI, TAPA
MAMZAI, TEHSIL CENTRAL, DISTRICT ORAKZAI

..... (RESPONDENT)

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

JUDGEMENT
28.09.2022

Impugned herein is the order dated 16.08.2022 passed by the learned Civil Judge-I, Kalaya vide which application of the appellant for passing of a preliminary decree, has been turned down.

(2). Appellant Said Habib vide his written application dated 22.04.2016 approached the then Assistant Political Agent Lower Orakzai for resolving the dispute of land between the present respondent Saifoor Khan, his brother Ismail and him (appellant)

wherein the appellant alleged that the respondent and his brother Ismail had illegally occupied the land of appellant situated at

Lower Orakzai and that the matter had also been resolved in favour of the appellant in a local jirga. After the merger of

erstwhile FATA in Khyber Pakhtunkhwa Province, the case file was requisitioned from the office of the then APA/Assistant

Commissioner Lower Orakzai and entrusted to Civil Judge-II,

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Orakzai where the parties recorded a joint statement wherein, they endorsed the decision of jirga already held between the parties, in the light of which the learned Civil Judge-II disposed of the case vide order dated 17.07.2019.

The appellant approached the court of Civil Judge-I, Kalaya with the request that in pursuance of the aforementioned order of learned CJ-II, Orakzai, final decree may be passed in favour of the appellant. The learned CJ-I, Kalaya vide his order dated 16.08.2022 turned down the application on the following grounds;

"Jirga decision was not exhibited. It was an unofficial Jirga decision. There is no specification/ description of the disputed property in the application filed before the court of APA, Lower Orakzai, joint statements of the parties recorded before the court and Jirga decision. Rights of the parties were not conclusively determined in order dated 17.07.2019. There is no decree sheet placed on file. There is nothing in order dated 17.07.2019 which could show that preliminary decree was passed in favour of petitioner. There is nothing in the order to the effect that what further proceedings are to be taken before the suit can be completely disposed of. Order dated 17.07.2019 does not fulfil the essential requirements/ingredients of a primary decree per law.

Resultantly, petition in hand is dismissed being not maintainable. No order as to cost."

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(3). Being aggrieved of the order, the appellant filed the present appeal.

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

(5). Perusal of case shows that the dispute between the parties was resolved vide a verdict of jirga dated 23.10.2017 which has been endorsed by the parties in a joint statement dated 17.06.2019 before the court of learned Civil Judge-II, Orakzai, however as there was no pleadings in the form of plaint in written statement before the court of learned CJ-II, Orakzai; therefore, a decree was not passed and instead the suit was disposed of as per the joint statement of the parties. When the learned counsel for the respondent was confronted with the aforementioned situation, he conceded that the respondent is still ready to honor the commitment made by him in a joint statement recorded before the court, however as there is no preliminary decree; therefore, the final decree cannot be passed. In these circumstances the learned counsel for the appellant submitted that he does not want to press the instant appeal, however he may be allowed to file a fresh suit. Learned counsel for the respondent also conceded that he has got no objection if the appellant is allowed to file a fresh suit.;

(6). Hence, in view of what is discussed above, keeping in view the request of appellant for allowing him to file a fresh suit and in order to avoid legal complications especially the impleadment of all the necessary parties to the dispute and detail of the

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disputed property, the instant appeal is dismissed being not pressed; however, the petitioner is allowed to file a fresh suit.

Consign.

Pronounced
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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: 28.09.2022

(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
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