

**IN THE COURT OF ABDUL BASIT,
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

Civil Appeal No. 03/13-Neem of 2023

Date of original institution: 09.01.2023

Date of restoration: 10.02.2024

Date of decision: 02.04.2024

Date of consignment:

Provincial Government of Khyber Pakhtunkhwa through Home Secretary,
Provincial Secretariat Peshawar and three others (appellants/defendants no.
1 to 4)

Versus

Kareem Gul son of Muhammad Wazeer, Quom Rabia Khel Tappa Afzal
Khel Upper Orakzai and seven others (respondents no. 1-8)

**CIVIL APPEAL UNDER SECTION 96 OF CPC AGAINST
THE JUDGEMENT AND DECREE OF THE LEARNED SENIOR
CIVIL JUDGE, ORAKZAI**

JUDGMENT

Through this judgment I will decide appeal preferred by appellants
against respondents challenging therein judgment, decree and order dated
29.11.2022 of the Court of learned Senior Civil Judge, Orakzai, whereby,
he has passed a preliminary decree in favour of respondent no. 1/plaintiff as
against them & respondent no. 5/defendants no. 1-5.

Concise facts of the case are that on 21.05.2019, respondent no. 1
had filed a civil suit no. 42/1 of 2022 of the court of learned Senior Civil
Judge, Orakzai, wherein, he contended that there existed 1000 acre landed
property situated at Wati Tarra, Mal Kady, Goda Rabia Khel, Tehsil Ismail
Zai, District Orakzai, which was ownership in possession of him and his
family members/members of the Tappa; that through a private partition, he
has been delivered 30 marla land including other landed property, which
was in his exclusive ownership in possession; that appellants & respondent
no. 2 have started constructing police piquet in his landed property covering

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Abdul Basit
Addl. District & Sessions Judge
Orakzai at Baber Mela,
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an area of 30 marla, to be referred as the suit property, without his prior permission and payment of any compensation; therefore, he has prayed for declaration of his title to the suit property and to declare the act of the appellants and respondent no. 2 to be wrong; that he has also prayed for decree for possession of suit property on demolishing the constructions coupled with decree for permanent and mandatory injunctions or recovery of Rs. 2,100,000/- @ of Rs. 70,000/- per marla as compensation of suit property as an alternate relief.

Appellants and respondent no. 2 were summoned by the learned trial court, who have filed written statement and contested the suit. The learned trial court framed the issues, parties led the evidence and finally the learned trial court passed a preliminary decree in favor of respondent no. 1 on 29.11.2022. Appellants were not satisfied from the court verdict, so on 09.01.2023 they have filed a civil appeal no. 03/13 of 2023 before this that was also dismissed by my learned predecessor in office on 08.04.2023. Thereafter, respondents no. 3-8 have filed a petition under section 12 (2) CPC alleging the above facts with addition that they were the exclusive owners in possession of suit property but respondent no. 1 has intentionally did not implead them in the main suit; that no summonses have been served on them; that respondent no. 1 has sought the declaration of landed property situated in Wati Tara, Malkada and Goda Rabia Khel and not of Mosa Mela piquet/check post; that house and land of respondent no. 5 was situated adjacent to suit property, however, respondent no. 1 has obtained the decree by application of fraud, misrepresentation and keeping both the courts in darkness; thus, they had prayed for setting aside the judgment, decree and order dated 08.04.2023 and to direct the learned trial court to implead them as necessary parties to the suit and decide the case on merits.

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22/04/2024
Abdul Basit
Addl. District & Sessions Judge-I
Orakzai at Baber Mela,
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(41)

On 10.02.2024, this court while keeping in view all facts hold that the contention raised by respondents no. 3-8 was sustainable; therefore, not only allowed 12 (2) CPC petition but also set-aside the judgment, decree & order passed by this court on 08.04.2023 in civil appeal no. 03/13 of 2023 confirming the order of learned trial court dated 29.11.2022 and restored the appeal.

Arguments heard and record perused.

Viewing the arguments advanced by learned counsel for parties and record before the court, it is held that admittedly this court has already allowed the 12 (2) CPC petition of respondents no. 3-8, whereby, set-aside the judgment, decree and order dated 08.04.2023 passed by this court in the instant appeal maintaining the judgment, decree and order dated 29.11.2022 of learned trial court, and held that respondents no. 3-8 were necessary parties to the suit but respondent no. 1 has not arrayed them defendants in the main suit and thereby committed fraud and misrepresentation; therefore, without discussing merits of the case, the impugned judgment, preliminary decree and order dated 29.11.2022 passed by the learned trial court is set-aside and civil suit no. 42/1 of 2022 *ibid* is restored. The learned Senior Civil Judge, Orakzai is directed to implead respondents no. 3-8, and all other necessary parties, if any, as defendants in the main suit either by offering an opportunity to respondent no. 1/plaintiff to submit an amended plaint, if he so desires to submit, or by inserting their names in column of defendants with red ink in accordance with law.

Parties before the court are directed to appear before the court of learned Senior Civil Judge, Orakzai on 17.04.2024. Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

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Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baher Mela,
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The requisitioned record along with copy of this order sent to the learned trial court and file of this court consigned to record room after necessary completion and compilation.



Announced
02.04.2024

Abdul Basit
Addl. District Judge-II, Orakzai

CERTIFICATE

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections, if any found.



Announced
02.04.2024

Abdul Basit
Addl. District Judge-II, Orakzai