

67 IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,
ORAKZAI (AT BABER MELA).

Petition No 17/6 Neem of 2023

Date of Institution 15.12.2023

Dated of Decision 05.03.2024

Mst. Noor Mar Jan alias Turagha D/O Jan Muhammad, Resident of Section Essa Khel
sub Section Bala Khan Nawasi, Tatany Kaly, District Orakzai.

..... **Petitioner.**

Versus

1. Mr. Azmat Ullah S/O Gareeb Shah
2. Mr. Zabit Shah S/O Gareeb Shah
3. Mr. Dilawar Khan S/O Gareeb Shah
4. Mr. Rehmat Ullah S/O Gareeb Shah
5. Mst. Mewa Jana W/O Gareeb Shah.

All Resident of Section Essa Khel sub Section Bala Khan Nawasi, Tatany Kaly, District
Orakzai.

..... **Respondents**

PETITION FOR SETTING ASIDE EX-PARTE DECREE DATED 21.06.2023
PASSED IN SUIT NO. 18/1OF 2023.

ORDER.
05.03.2024

Petitioner through attorney present.

Respondent No.01 in person and as attorney for respondent No.02
to 04.

Brief facts of the case are that petitioner has filed the instant
application for setting aside ex-parte decree dated 21.06.2023 passed in
suit No. 18/1of 2023.

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Ullah
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Petitioner has contended that suit No. 18/1 of 2023 was filed against her by present respondents and the same was ex-parte decreed vide ex-parte order dated: 21.06.2023. That petitioner was not served upon in accordance with law. That petitioner be given an opportunity to defend her valuable rights. That when petitioner got knowledge of ex-parte decree, she approached this court for setting aside ex-parte decree passed against her.

Respondents/decreed holders contested the application by filing reply. They denied the version of petitioner and contended that petitioner was duly served upon and that petition is time barred and liable to be dismissed.

Brief facts of suit No. 18/1 of 2023 are that plaintiffs filed the instant suit for declaration, permanent & mandatory injunction and possession through partition to the effect they are co-owner in possession of suit property (fully detailed in the head note of the plaint) along with defendant No.1 to 6. Plaintiffs in his plaint further stressed that defendant No.1 & 2 are illegally interfering in suit property. Plaintiffs alleged in their plaint that defendant No.7 has no concern with the suit property. That defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.

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Sami Ullah
Civil Judge/JM-I
Orakzai at (Gobar Mela)

After institution of the suit No.18/1 of 2023, defendants were summoned and as per report of process server, defendant No.01, 02 & 08 were served personally, defendant No.07 served through his clerk while defendant No.09 showed reluctant for taking the same. Furthermore, according to the report of process server defendant No.03/petitioner,

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defendant No.04 & 06 were married in another district while defendant No.05 was married in the house of plaintiff. Petitioner/defendant No.03 was proceeded against ex-parte and ex-parte decree dated: 21.06.2023 was passed after recording ex-parte evidence of respondents/plaintiffs.

As per Order-V, Rule-15 CPC, where defendant cannot be found and he/she has no agent to accept the service of the summon on his/her behalf, service may be made on any adult male member of the family of the defendant who is residing with him/her. There are certain conditions for service on adult male member to be valid. There should be some material on record that defendant could not be found and his no authorized agent. The adult should be the member of the family and residing with him/her. There is nothing in the report of serving officer which could show that any effort whatsoever was made by him to find out petitioner/defendant.


This court is of the view after keeping in consideration the facts of the instant petition that in plethora of judgements of the superior courts, it is held that full opportunity of hearing be given to the parties and technicalities should be avoided in the best interest of justice. As far as limitation is concerned, where defendant is duly served, application for setting aside ex-parte decree would be governed by Article 164, of Limitation Act 1908. The time for setting aside ex-parte decree in such a case is 30 days from the date of decree but when notice for appearance is not duly served, such application would be governed by Article 181, of Limitation Act. As mentioned above, summon/notice was not served on the petitioner personally. Resultantly, petition in hand is hereby **accepted**

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Ullah
05.03.2024
Sardar Ullah
Civil Judge/JM-I
Orakzai (Babar Mela)

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and ex-parte decree dated: 21.06.2023 is set aside subject to cost of Rs.3000/-. Suit No.18/1 of 2023 is restored. Muharrir is directed to do the needful. The instant petition/file be consigned to record room after necessary completion and compilation. Copy of this order be placed on main file of suit No.18/1 of 2023.

Announced
05.03.2024


Sami Ullah
Civil Judge-I,
Orakzai (At Baber Mela)