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

*Mix.*

**Civil Appeal No. 22/14 of 2023**

Date of institution: 02.12.2023

Date of decision: 05.03.2024

Date of consignment:

Taj Wali Khan and Ihsan-ul-Haq sons of Iman Shah resident of Quom Feroz Khel, Tappa Jaisal Khe, Tehsil Lower District Orakzai (appellants/defendants)

Versus

Dost Muhammad son of Syed Amal Jan resident of Quom Feroz Khel, Tappa Qasim Khel, Village Goin, Tehsil Lower and the District Orakzai (respondent/plaintiff)

**JUDGMENT**

Through this judgment I shall decide appeal preferred by appellants against respondent challenging the judgment and order dated 28.10.2023 of the court of learned Civil Judge-I, Kalaya, District Orakzai, whereby, he has dismissed the application of appellants/defendants filed under Order VII Rule 11 CPC for the rejection of plaint.

Succinct facts of the case are that respondent/plaintiff has filed a civil suit no. 26/1 of 2023, wherein, contended that the landed property comprising of around 1½ kanal barren area bounded from east and west ancestral property of the respondent/plaintiff, north house of respondent/plaintiff and south the purchased house of appellants/defendants situated in moza Goin, Tehsil & District Orakzai, the suit property, was ownership of Dost Muhammad; that appellants/defendants have secretly purchased the suit property from his cousins Mumtaz etc. through oral sale on 12.04.2023 without prior notice and information to him through alleged an excessive amount so as to defeat his right of pre-emption despite fact that value of the suit property is not more than one hundred thousand rupees; that respondent plaintiff has superior right of pre-emption in comparison to appellants/defendants on the strength of co-ownership and contiguity vis-à-vis other easement and appendages rights etc.

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**Abdul Basit**  
District & Sessions Judge  
Orakzai at Baber Mela,  
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attached with suit property; that they have come to know about suit transaction in his house at Orakzai on 25.11.2023 at 11.00 am from his cousin Abdullah Majeed, whereupon, he has declared his intention to pre-empt the suit property then and there by performing *talb-i-muwathibat*, where after, he has assembled elders of locality and his cousins and informed them too; that thereafter, he has performed second demand of *talb-i-ishhad* by issuing notice to appellants/defendants on 25.05.2023 in presence of the witnesses namely Khana Gul and Muhammad Ayaz, where after, they were asked time and again to deliver possession of suit property on receipt of actual amount but they refused, and finally, he has opted for *talb-i-khasumat*, therefore, respondent/plaintiff has prayed for decree for possession of suit property through exercise of his right of pre-emption and decree for permanent and mandatory injunctions as per prayer.

Appellants/defendants were summoned by the learned trial court, who appeared & filed application under Order 7 Rule 11 CPC for the rejection of plaint, to which respondent/plaintiff filed written reply. The learned trial court heard arguments and dismissed the application.

Being not contended with the decision of learned trial court, appellants/defendants have impugned the judgment and order dated 28.10.2023 of the learned trial court with assertions that the order is illegal, unfounded, against the law; therefore, prayed that on accepting the appeal, judgment and order of learned trial court may be set-aside and on allowing their application, the plaint of respondent/plaintiff may be dismissed.

Arguments heard and record perused.

Viewing the record and the valuable assistance extended by learned counsel for parties, it is held that admittedly a pre-emption suit was earlier filed by Muhammad Yousaf against appellants/defendants in respect of the same subject matter, wherein, Muhammad Yousaf has referred that he has come to know about the suit transaction from his cousin Dost Muhammad

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(respondent/plaintiff), which suit was dismissed on 22.05.2023 for want of deposit of 1/3<sup>rd</sup> sale consideration of the suit property; however, the written reply submitted by respondent/plaintiff in the instant case suggests that he was neither in the knowledge of earlier <sup>suit</sup> nor had he informed Muhammad Yousaf about this, which is sufficient ground to hold that the matter is one of factual in nature and cannot be decided without recording of pro and contra evidence. On the other hand, there is nothing on record in the shape of affidavit or statement of respondent/plaintiff in the previous suit, which could have led the court to infer that he had informed Muhammad Yousaf about suit transaction; therefore, it is held that impugned judgment and order of the learned trial court does not suffer any material irregularity, which is upheld and appeal in hands **dismissed** being bereft of merits.

Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

Copy of this order be placed on record of learned lower court, where after, the requisitioned record be returned and file of this court consigned to record room after necessary completion and compilation.



**Announced**  
05.03.2024

**Abdul Basit**  
Addl. District Judge-II, Orakzai

**CERTIFICATE**

Certified that this judgment consists of three (03) pages, those are signed by me after necessary corrections.



**Announced**  
05.03.2024

**Abdul Basit**  
Addl. District Judge-II, Orakzai