

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 2/13 OF 2024
DATE OF INSTITUTION : 07.03.2024
DATE OF DECISION. : 05.04.2024

1. SALIB KHAN
2. MUHAMMAD GUL
3. MEEZA ULLAH
4. CHINAR GUL
5. ISMAIL KHAN
6. ARIF KHAN
7. FAZAL KHAN
8. ABDUL MALIK
9. RASHID KHAN
10. RAMEEN KHAN
11. ZAHIR KHAN
12. FAZAL REHMAN
13. MALAK KHAN
14. NIAZ MEENA
15. AMBILA KHAN BIBI
16. AMRILA BIBI

ALL SONS/GRANDSONS OF SAID REHMAN ALIAS PASHO
KHAN, R/O CASTE AKA KHEL, KANDEY KABAL KHEL,
KHYBER

....(APPELLANTS)

-VERSUS-

1. HASHIM GUL S/O AZMAT
 2. ABDUL JALIL S/O MIR AKBAR
 3. NIAZMEEN
 4. KHANA GUL S/O KHIAL BADSHAH
 5. LAL MIN SUBIDAR S/O AMEEN SHAH
- R/O CASTE FERAZ KHEL JALAL MASI, TAPA JAISAL
KHEL, TEHSIL AND DISTRICT ORAKZAI


.....(RESPONDENTS)

Present: Mr. Asad Ijaz Advocate for appellants
: Mr. Sana Ullah Khan and Mr. Abid Ali Advocates for respondents

JUDGMENT

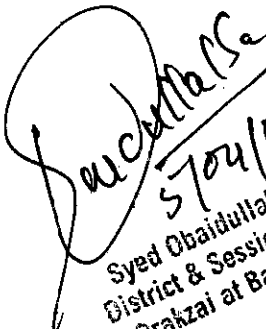
05.04.2024

Impugned herein is the order dated 06.03.2024 of the
learned Civil Judge-II, Tehsil Court Kalaya vide which the
application of the appellants/plaintiffs for appointment of
local commission for recording statement of a witness, has
been dismissed.


5/4/24
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(2). The appellants/plaintiffs through a suit before the learned trial court sought declaration-cum-perpetual and mandatory injunction to the effect that since their forefathers they are owners in possession of the suit property which includes a house measuring 01 Kanal and fields measuring 05 Jeerab as detailed in the headnote of the plaint, that a jirga was held between the parties on 19.08.1972 in the presence of local elders and a verdict was passed wherein a small house and 04 fields measuring 10 Jeerab were handed over to the respondents/defendants besides it was decided that the respondents/defendants had no legal entitlement to these properties according to the verdict but the respondents/defendants breached the verdict, that another jirga was convened on 24.10.2009 which also ruled in favour of the appellants/plaintiffs and that the respondents/defendants having got no concern whatsoever with the suit property, are bent upon making interfering by taking its possession. The respondents/defendants were summoned who appeared before the learned trial court and contested the suit by submitting a written statement.

(3). The appellants/plaintiffs submitted application for appointment of local commission for recording statement of one, Moeen, which was dismissed by the learned trial court after hearing the arguments. Appellants/plaintiffs,

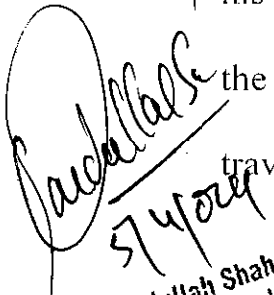

5/04/24
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

considering themselves aggrieved of the impugned order,
filed the instant appeal.

- (4). Arguments heard and record gone through.
- (5). Perusal of the case file reveals that the instant suit was filed before the learned trial court on 29.06.2021, the list of witness of both parties were submitted on 24.07.2023 whereafter the case was fixed for plaintiffs' evidence on 08.08.2023. Following this, the appellants/plaintiffs produced three witnesses until 09.10.2023 when they submitted an application for appointment of local commission; however, it is astonishing to note that on 07.11.2023, after recording the statements of PW-4 and PW-5, the plaintiffs' counsel closed their evidence.

Secondly, it raises a question as to why the plaintiffs opted to conclude their evidence if the statement of Moeen was deemed significant enough to necessitate the appointment of a commission. The plaintiffs must have waited for the learned trial court to pass an order on their application.

Thirdly, the plaintiffs' alleged that the said witness is of old age, therefore, cannot appear before the court to record his statement; however, no document has been produced by the plaintiff which could confirm the fact of his inability to travel or turn up before the court. The plaintiffs have even


574/2024
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

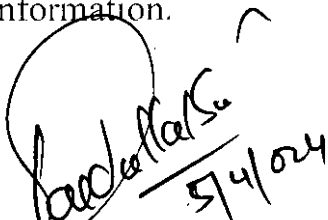


failed to produce the CNIC or any other document of the said witness verifying the old-age stance.

- (6). In these circumstances, the learned trial court has rightly dismissed the application of the appellants/plaintiffs. The impugned order of the learned trial court is unexceptional and not open to any interference by this court. Accordingly, the appeal in hand resultantly stands dismissed being meritless with no order as to cost.

Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgment be sent to learned trial court for information.

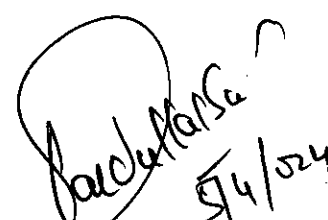
Dated: 05.04.2024


(SYED OBAIDULLAH SHAH)
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: 05.04.2024


(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

