

(7)

IN THE COURT OF CIVIL JUDGE-I, KALAYA, ORAKZAI

Petition No.6/6 of 2024.

Date of institution.....30.03.2024.

Date of decision.....29.04.2024.

Order.06**29.04.2024**

Khalid Usman, son of petitioner (deceased Wakeel Shah) along with counsel present. Safi Ullah, special attorney for respondents along with counsel present. Arguments on behalf of counsel for respondents already heard. Arguments of counsel for petitioners heard today and record perused.

Briefs facts of the case in hand are that the respondents/plaintiffs Rafi Ullah etc had filed a civil suit against the petitioners/defendants for declaration cum-perpetual and mandatory injunction and possession to the effect that respondents/plaintiffs are the exclusive owners of the suit property situated at Tandori Chan, Shaho Khel, Orakzai while the petitioners/defendants are the cultivators of the same on the basis of tenancy. The predecessor of the respondents/plaintiffs had handed over the suit property for cultivation to the predecessor of petitioners/defendants along with the built-up house for their residence

some decades back. The respondents/plaintiffs being owners opted to cancel the tenancy which was denied and it necessitated presentation of an application before the then Assistant Political Agent, Lower Orakzai for declaration of the respondents/plaintiffs as owners of the suit property along with the built-up house and handing over back the



29/04/2024
ZAHIR KHAN
Civil Judge/Jr
Kalaya Orakzai

possession of the same through ejection of the petitioners/defendants. That, the then APA Orakzai appointed a jirga and in the light of jirga decision, an order was passed on the 10.11.2014; whereby, the declaration with the possession and ejection of the petitioners/defendants from the suit property was granted as relief prayed for and consequential relief accordingly.

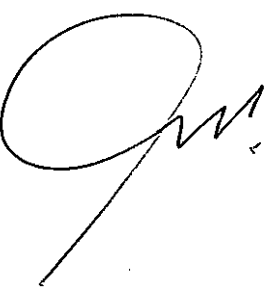
The said decision of the APA, Orakzai was upheld by the learned Commissioner, Kohat Division vide order dated: 06.08.2015; but afterward, the same decision was set aside and the case was remanded back to the Trial Court (APA Orakzai) by the then FATA Tribunal vide order dated 06.11.2017. After merger of Erst-while FATA into Khyber Pakhtunkhwa, pending civil cases were transferred to the civil courts of district judiciary. The respondents/plaintiffs moved the court with an application for withdrawal of the suit for permission to file fresh suit which was allowed vide order No. 4, dated: 25.09.2019 by the then learned Civil Judge-II, Orakzai. Suit of respondents/plaintiffs was decreed vide judgment, decree and order dated 21.12.2021. This judgment , decree and order was challenged in civil appeal before the

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

court of learned ADJ, Orakzai at Baber Mela and vide judgment dated 08.06.2022, appeal of petitioners/defendants was dismissed. This judgment of learned appellate court was challenged in civil revision before the August Peshawar High Court, Peshawar which was also dismissed.


29/04/2024

Petitioners have filed the objection petition in hand along with application for suspension of execution proceedings pending before this court on the grounds that full description of decretal property is not mentioned in the plaint and decree sheet and execution cannot be satisfied due to mis-joinder and non-joinder of the parties. Section 47 CPC provides that all questions relating to execution, discharge or satisfaction of the decree that arise between the decree holder and judgment debtor may be taken in objection petition. Section 47 CPC determines the limit of jurisdiction of executing court and limitation. (The question relating to limitation and jurisdiction of executing court). As mentioned above, suit of respondents was decreed in their favor vide judgment, decree and order dated: 21.12.2021 as prayed for. The subject matter of the execution is very much clear. There is no ambiguity in the subject matter of execution. The court which has passed the decree was court of competent jurisdiction. There is nothing on record which could show that the court which passed the decree was lacking in inherent jurisdiction. Description of decretal property is given in the plaint, judgment and decree sheet. The grounds raised in the objection petition are not relevant and maintainable. Decree dated 21.12.2021 is a proper decree and duly executable. The main object of petitioners is to prolong the agony of respondents/decreed holders and to deny the decree holders of the fruits of decree. Per judgments of Apex Superior Courts, executing court is not bound to hold regular inquiry by framing issues and providing opportunity to parties to produce evidence. Executing court is vested with power to reject objection



29/04/2024

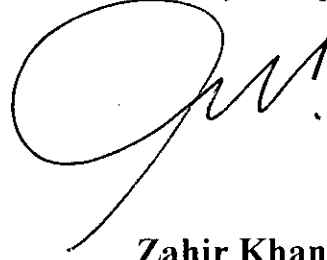
ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

(P)

petition summarily in absence of prima facie proof in support of objection petition, resultantly, this objection petition is hereby dismissed with cost of Rs. 5000/-.

File be consigned to record room after its necessary completion and completion.

ANNOUNCED:
29.04.2024



Zahir Khan
Civil Judge-I, Kalaya, Orakzai