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

Civil Misc. Appeal No. 23/14 of 2023

Date of institution: 13.12.2023

Date of decision: 02.05.2024

Date of consignment:

Waheedullah son of Hadi Gul resident of Chappar Mishti Babara Kali,
Lower Orakzai (appellant/defendant no. 3)

Versus

Gul Zali son of Khiyal Zali resident of Quom Bezot Tappa Yar Kali Khel,
Lower Orakzai and four others (respondents no. 1-5)

JUDGMENT

Through this judgment I shall decide a civil miscellaneous appeal filed by appellant against respondent challenging the judgment and order dated 30.11.2023 of the Court of learned Civil Judge-I, Orakzai, whereby, he has dismissed the application filed by appellant against respondent for rejection of plaint under Order VII Rule 11 Civil Procedure Code, 1908.

Concise facts of the case as per contents of the plaint are that father of respondent/plaintiff has exchanged his tractor 1992 model with tractor Messy Ferguson model 1999 registration no. C-1911-Kohat, the suit tractor, of respondents/defendants no. 1 & 2 and also paid them some money through agreement in presence of witnesses in 2003-04; that appellant and respondents no. 2-5 have shouldered the responsibility of tractor documents; that since the respondent no. 1 was minor at that time; therefore, his father has prepared the documents in his name after due verification from the Excise Department Kohat; that on 11.04.2023, the appellant/defendant no. 3 has filed an application for registration of false and unfounded criminal case against him on pretext that his father has snatched away the suit tractor from him forcibly as the original documents were with him; that the SHO

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concerned/defendant no. 4 in presence of Imtiaz etc. has taken in possession the original documents of suit tractor from him in order to convene a jirga, however, later he has registered an FIR against him; that there was no any criminal case registered against him during the intervening period nor there was any criminal record available in any department; that on registration of criminal case against him, he has returned the suit tractor to respondents/defendants no. 1 & 2 for they had shouldered the responsibility; that respondent no. 1 has been released on bail by learned Judicial Magistrate; that appellant and respondent/defendant no. 4 have forcibly retained the suit tractor along with documents from him and want to deprive him from it; that due to his arrest, his reputation was also badly affected in the society; therefore, he has prayed for decree to declare him the owner of suit tractor coupled with decree for return of suit tractor or to pay him an amount of Rs. 850,000/- as an alternate relief; that he has also prayed for decree for recovery of Rs. 200,000/- as costs of the suit, hence, the suit.

The appellant and respondents no. 2-5 were summoned by the learned trial court. They put on appearance, however, the appellant has filed an application for rejection of plaint under Order VII Rule 11 CPC, which was resisted by respondent no. 1/plaintiff. After hearing the arguments, the learned trial court dismissed the application of appellant through impugned judgment and order dated 30.11.2023. Being dissatisfied with the verdict, the appellant has preferred the instant appeal with assertion that judgment and order of the learned trial court is illegal. He alleged that plaint does not disclose a cause of action, whereas, criminal case is still sub-judice before the competent forum; therefore, prayed for acceptance of the appeal and on allowing his application, to reject the plaint.

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Arguments heard and record perused.

While going through the record and arguments advanced by learned counsel for parties, it is held that although appellant has alleged pendency of a criminal case against respondent no. 1/plaintiff before the competent court, however, mere pending of a criminal case itself is not sufficient to bar someone from claiming his title to the suit property. It is also observed that admittedly the suit tractor has been given into the possession to the appellant on bail followed by a superdari petition in a criminal case but this must be kept in mind that respondent no. 1/plaintiff has challenged the title of suit tractor on ground that his father has exchanged his tractor model 1992 with the suit tractor back in the year 2003-04 through an agreement and some of the money was also paid in this respect, which is purely a factual controversy and in case the respondent no. 1/plaintiff has proved the same, then, appellant has to return the suit tractor being on bail with him. It is; therefore, held that plaint does disclose a cause of action. So far question of non-affixation of court fee is related, it is observed that the learned trial court has rightly held that it is curable and the plaint cannot be rejected on this score especially when there is no direction from the court side to affix the court fee. The question of limitation is mixed question of law and fact, which cannot be ascertained without recording of pro and contra evidence.

In the wake of above discussion, it is held that the learned trial court has appreciated the available record aptly in accordance with law and did not commit any illegality or irregularity by passing the impugned judgment and order warranting the interference of this court, hence, the impugned judgment and order dated 30.11.2023 of the learned trial court is upheld and appeal dismissed being bereft of merits.

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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.



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CERTIFICATE

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



Announced
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Abdul Basit
Addl. District Judge-II, Orakzai