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

Civil Revision No. 05/12 of 2024

Date of institution: 02.04.2024

Date of decision: 06.06.2024

Date of consignment:

Khan Mat Khan son of Pirad Khan resident of Quom Uthman Khel, Tehsil Lower, District Orakzai and six others in persons and as representative for other villagers (petitioners/plaintiffs)

Versus

Mir son of Pir Gul resident of Qum Misht Presently Endra Tehsil Lower, District Orakzai and twelve others (respondents/defendants)

**JUDGMENT**

Through this judgment I shall decide civil revision petition filed by petitioners against respondents under section 115 of The Civil Procedure Code, 1908 challenging therein the judgment and order dated 15.02.2024 of the court of learned Civil Judge, II, Kalaya, Orakzai.

Concise facts of the case are that petitioners have filed a civil suit against respondents in a representative capacity before the court of learned Civil Judge-II, Kalaya Orakzai, wherein, alleged that they belonged to Quom Uthman Khel and respondents belonged to different Quom but the later were settled in the Quom Uthman Khel; that petitioners were owners in possession of landed property of Quom Uthman Khel and Mountains situated in Endra Quom Uthman Khel bounded from east Madrasa Quom Uthman Khel, west Gawak Check Post, north and south the mountains, *the suit property*, since the time of their forefathers; that the suit property was also consisted of residential area, where their houses were situated; that respondents were settled there as cultivators in the suit property, where petitioners have constructed houses at different places and respondents

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were living in it; that now, respondents claimed the suit property to be their ownership and have started cutting the trees without their permission, making interference in it, whereas, they have also stopped paying them the produces etc.; that this act of respondents is illegal, wrong, against the law; therefore, petitioners have prayed for declaration that they are owners in possession of the suit property; that they have also prayed for decree for eviction of respondents from the suit property coupled with prayers for permanent and mandatory injunctions so as to refrain them from cutting the standing trees and making any sort of interference in the suit property, hence, the suit.

The suit was contested by respondents before the learned trial court. On 06.11.2023, the petitioners have filed an application under Order 23 Rule 1 of The Civil Procedure Code, 1908 for withdrawal of the suit with permission to file fresh suit. Respondents filed written reply and contested the petition. The learned trial court heard arguments and finally dismissed the application on 15.02.2024 with observations that the legal defects mentioned by petitioners could have been addressed by filing an amended plaint. Petitioners being not contended with findings of the learned trial court have assailed the order through this civil revision petition, wherein, alleged that impugned judgment & order of the learned trial court is wrong, result of misreading and non-reading of record on file and subject to set-aside. He added that learned trial court has not perused the record because, the points they have raised in the application cannot be cured by filing amended plaint; therefore, prayed that on acceptance of instant petition, the impugned judgment & order of the learned trial court may be set-aside and they may be allowed to withdraw the suit with permission to file fresh one.

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Learned counsel for respondents refuted the arguments of learned counsel for petitioners and argued that petitioners have filed the instant petition just to linger on the proceedings because their object could have been achieved by filing an amended plaint; therefore, their petition may be dismissed and judgment and order of the learned trial court may be upheld.

Arguments heard and record perused.

Viewing the arguments advanced by learned counsel for parties and record before the court, it is held that petitioners intend to withdraw the instant suit with permission to file fresh one on grounds that they have not mentioned complete particulars/description and area of the suit property in the plaint, which shall cause them inconvenience to establish the case, which appears to be a genuine reason. More so, petitioners also intend to refer agreements and jirga verdicts passed between the parties at dispute, which have not been specifically mentioned in the plaint. Petitioners have also alleged the cutting of trees by respondents from the suit property and in this respect they intend to claim the recovery amount, whereas, there are also some other legal errors in the plaint, which they want to remove by filing the fresh suit, which all pleas were allegedly inadvertently left to be raised in the main suit, which all appear to be solid grounds for withdrawal of suit with permission to file fresh suit.

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I do not agree with findings of learned trial court that these pleas could have been submitted by filing an amended plaint because making such types of amendments in the plaint would altogether change the nature of the suit specially with reference to recovery of money and agreements/ jirga verdicts petitioners intend to include in the suit, which has its own effect in respect of period of limitation and other legal aspects. Besides, if the learned trial court had reached to a conclusion that those could have

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been cured by submitting an amendment petition, then, the learned trial court while dismissing the petition should have used its inherent powers and allowed the petitioners to submit an amended plaint instead of directly fixing the case for petitioners' evidence. By allowing this revision in hands, petitioners would be in a position to add or delete parties and submit comprehensive pleadings by looking into all aspect of the case, which would not only achieve the ends of justice on hand but shall also avoid multiplicity of litigation between the parties in future. Besides, Order 23 Rule 1 (2) of The Civil Procedure Code, 1908 also provides that where Court is satisfied that a suit must fail by reason of some formal defect, or that there are other sufficient grounds for allowing the plaintiff to institute fresh suit for the subject-matter of a suit or part of claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of claim. Contents of application provide that petitioners have come to know about the legal defects and shortcomings in their suit during trial stage and if those legal defects or shortcomings are not removed, there is likelihood of defeating the ends of justice, which is not the spirit of law.

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In view of the above, it is held that the learned trial court has not properly looked into the available pleadings and record on file, hence, civil revision in hands is allowed, judgment and order dated: 15.02.2024 of the learned trial court is set-aside and petitioners/plaintiffs are permitted to withdraw the suit in hands with permission to file fresh one purely in accordance with law and subject to payment of costs of Rs. 10,000/- to be paid by petitioners/plaintiffs to contesting respondents/defendants. The learned trial court may be informed accordingly.

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Copy of this order be sent to the learned lower court, where after, the requisitioned record, if any, 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 five (05) pages, those are signed by me after necessary corrections.



**Announced**  
06.06.2024

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