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

Civil Revision No. 03/12 of 2024

Date of institution: 14.03.2024

Date of decision: 08.06.2024

Date of consignment:

Taj Muhammad son of Mujib Khan resident of Quom Feroz Khel Tappa Ghairat Khel (Daud Khel), Tehsil Lower, District Orakzai (petitioner/defendant)

Versus

Muhammad Munsif Khan son of Walayat Khan and Arsala Khan son of Feroz Khan residents of Quom Feroz Khel Ghairat Khel (Daud Khel), Tehsil Lower, District Orakzai (respondents/plaintiffs)

JUDGMENT

Through this judgment I shall decide civil revision petition filed by petitioner against respondents u/section 115 of The Civil Procedure Code, 1908 challenging therein the judgment and order dated 17.02.2024 of the court of learned Civil Judge-II, Kalaya, Orakzai passed in a civil suit.

Concise facts of the case are that respondents/plaintiffs have filed a suit for recovery of money against petitioner/defendant by alleging that they belonged to Lower Orakzai; that there was dispute over lands between petitioner/defendant and Abdul Manan, whereat, on 15.11.2020 the earlier approached respondent/plaintiff no. 1 for resolution of dispute between him and Abdul Manan; that thereupon, he joined with him Feroz Khan, father of respondent/plaintiff no. 2, and convened jirga between them; that since the lands of Abdul Manan were adjacent to house of petitioner/defendant due to which he was facing hardship; therefore, they after hectic efforts and with the consent of parties through a written agreement dated 15.11.2020 decided that all the lands of Abdul Manan situated near the house of petitioner/defendant shall be exchanged with the landed property

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of petitioner/defendant situated in Sorgul; that it was also made clear that if anyone has violated the terms of jirga agreement, he shall pay penalty/ fine of rupees three million; that petitioner/defendant and Abdul Manan have agreed to the terms of exchange and signed the agreement in front of jirga members, however, petitioner/defendant withdrew from the terms of agreement before the measurement of properties, whereat, Abdul Manan complained to respondents/plaintiffs and also filed an application before the Court of APA, Orakzai; that on his application, the jirga was convened and decision dated 30.01.2019 was passed by APA, Orakzai; that since the jirga dated 30.01.2019 was ex-parte, therefore, Abdul Manan waxed them for recovery of penalty amount; that the second jirga member Feroz had died by then; therefore, on 23.08.2023 respondent no. 1 and Arsala Khan, son of Feroz Khan, had filed an application to DPO, Orakzai and the DRC decision was passed in their favor; however, petitioner/defendant refused to concede the same; therefore, respondents/plaintiffs have prayed for recovery of 3.2 million rupees inclusive of one lac rupee on account of court fee/appearance charges and one lac rupees as damages for its onward payment to Abdul Manan; hence, the suit.

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Petitioner/defendant contested the suit by filing written statement, where he has denied the allegations with assertion that jirga decision was forged, fictitious and based on fraud because he had neither authorized anyone to decide any dispute between them nor did sign or thumb impress the jirga decision. He has also filed an application for rejection of plaint under Order VII Rule 11 CPC, to which the respondents/plaintiffs filed a written reply. The petition was contested by the parties, however, the learned trial court dismissed the same vide order dated 17.02.2024.

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Petitioner feeling aggrieved impugned herein the dismissal order dated 17.02.2024 of the learned trial court by alleging it as wrong, illegal, against the law, facts and untenable in the eyes of law. He alleged that learned trial court has committed grave illegality and material irregularity in exercise of jurisdiction vested in it, which resulted in miscarriage of justice. He alleged that order is the result of misreading, non-reading of material available on file and based on improper appreciation of record. He further contended that court has passed the decision in haste; therefore, prayed that on acceptance of instant revision petition, judgment and order of the learned trial court dated 17.02.2024 may be set-aside and plaint of respondents/plaintiffs rejected.

Arguments heard and record perused.

Before dilating upon the merits of the case, I would like to mention that petitioner/defendant has already filed a civil suit against Abdul Manan and DPO, Orakzai before the institution of suit in hands, wherein, he has not only challenged but also prayed for cancellation of agreements dated 30.01.2019 and 15.11.2020 being forged, fake, fictitious, concocted, ex-parte and inoperative upon his rights, which is sub-judice before the court of learned Civil Judge-II, Kalaya, Orakzai and admitted by learned counsel for respondents/defendants at the bar; therefore, the questions that as to whether petitioner/defendant has authorized the respondents/plaintiffs to resolve the dispute between him and Abdul Manan or not, or whether petitioner/defendant has signed/thumb impressed the agreement or not, or whether the agreement dated 15.11.2020 is fake, forged and concocted or not shall be seen and decided by the learned trial court after recording of pro and contra evidence in the civil suit already sub-judice before him.

Handwritten signature and stamp:
Abdul Manan
Addl. District Judge-II
Orakzai at Baber Mela.
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Now coming to my findings on this petition, it is held that the main contention of respondents/plaintiffs is that on the request of petitioner/defendant, they have executed an agreement dated: 15.11.2020 between petitioner/defendant and Abdul Manan with the condition that whoever violated the terms/conditions of agreement, the breaching party shall pay penalty amount of three million rupees; however, the contents of suit filed by respondents/defendants envisage two different aspects; first, it appears that respondents/plaintiffs are claiming recovery of money for themselves. On the other side, it seems that they intend the recovery of money for its onward payment to Abdul Manan. Taking first scenario into consideration, it is held that the suit of respondents/defendants is *void ab-initio* because there is no law of the law land, which provides any provision that any jirga member while resolving the dispute between parties shall fix any money for its payment to jirga members as a penalty/fine. Rather, fixing such type of penalty is also contrary to the injunctions of Islam as well as against the spirit of jirga rules and the morale. So far second aspect of the case is related, it is held that respondents/plaintiffs cannot approach the court to claim money for someone else unless the aggrieved party himself appears before the court and files a suit. More so, it is already discussed above that petitioner/defendant had already filed a civil suit against Abdul Manan, wherein, impugned the jirga decision dated 15.11.2020 and DRC verdict dated 30.01.2019, which avails that not only the suit in hands is premature but the plaint also does not disclose a cause of action; thus, respondents/plaintiffs cannot claim recovery of money as a pre-emptive action. Besides above, not only the form of suit is bad but this is the aggrieved person, who has to approach the court for to redress his grievances.


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In view of my above findings, this is held that the learned trial court has erred to exercise the jurisdiction vested in it and failed to appreciate the record on file; therefore, on allowing the revision petition in hands, the application filed by petitioner/defendant is accepted, impugned judgment and order dated 17.02.2024 of the learned Civil Judge-II, Kalaya Orakzai is set-aside and plaint of respondents/plaintiffs is rejected.

Parties have to bear costs of their proceedings.

Copy of this order is sent to 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.




Announced
08.06.2024

Abdul Basit
Addl. District Judge-II, Orakzai

CERTIFICATE

Certified that this judgment consists of five (05) pages, those are signed by me after necessary corrections.



Announced
08.06.2024

Abdul Basit
Addl. District Judge-II, Orakzai