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

Civil Appeal No. 06/13 of 2024

Date of institution: 28.03.2024

Date of decision: 07.06.2024

Date of consignment:

Muhammad Shaer and Muhammad Shafique sons of Syed Akbar residents of Buland Khel, Orakzai (appellants/plaintiffs)

Versus

Rehmat Khan son of Wali Khan resident of Buland Khel, Orakzai and three others (respondents/defendants)

**APPEAL UNDER SECTION 96 OF CPC AGAINST  
THE JUDGEMENT AND DECREE OF THE LEARNED CIVIL  
JUDGE-I, ORAKZAI**

**JUDGMENT**

Through this judgment I will decide appeal preferred by appellants against respondents challenging the judgment, decree and order dated 23.02.2024 of the Court of learned Civil Judge-I, Orakzai whereby he has struck off the right of evidence of appellants/plaintiffs and dismissed their suit while invoking the provision of Order XVII Rule 3 of CPC.

Concise facts of the case as per amended plaint are that appellants were residents of Quom Buland Khel; that they were owners in possession of a plot measuring around 463 marla or. 23-K 15-M, boundaries are fully detailed in the headnote of amended plaint, on strength of quomi partition held on 23.06.2005, to be referred as suit property; that the partition was reduced into writing and the site plan was also prepared, where after, other co-owners were also given their shares and enjoyed the possession; that respondents have got no concern with the suit property, however, they have constructed houses, raised boundary walls and made forcible possession over an area of 209 marla out of suit property situated towards the western

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side and plots of the appellants; that many jirga were convened but of no avail; that respondents have got their due shares through partition but still bent upon to make interference in the suit property; therefore, appellants have prayed for decree to declare that they are owners in possession of the suit property and respondents have no concern with it; appellants have also prayed for decree for the possession on demolition of raised constructions coupled with decree for permanent and mandatory injunctions, hence, suit.

Respondents were summoned by learned trial court. They appeared and filed a joint written statement, wherein, raised various legal and factual controversies, which were reduced into different issues as below;

1. *Whether the plaintiffs have got a cause of action?*
  2. *Whether this Court has got the jurisdiction to entertain this suit?*
  3. *Whether the plaintiffs are estopped to sue?*
  4. *Whether the suit of the plaintiffs is time barred?*
  5. *Whether the present suit is bad for misjoinder and non-joinder?*
  6. *Whether the plaintiffs are owners in possession of dispute property on the basis of private partition?*
  7. *Whether defendants have taken 209 marla out of 463 marla of plaintiffs' land into their possession?*
  8. *Whether the plaintiffs are entitled to the decree as prayed for?*
- Relief?*

Parties were directed to produce the evidence. Appellants recorded the statements of five witnesses, out of which cross-examination of PW-5 was recorded, whereas, cross-examinations of the remaining witnesses i.e. PWs 1-4 were reserved. Thereafter, many a times, appellants were offered opportunities to produce their witnesses for cross-examination, however, they failed and finally the learned trial court served them with notice under Order XVII Rule 3 CPC and struck off their right of evidence due to non-compliance of court direction and dismissed the suit on 23.02.2024.

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The appellants being aggrieved from the dismissal order filed instant appeal along with application for condonation of delay. Learned counsel for appellants while arguing narrated above facts of the case with assertion that order of learned trial court is illegal, against the law and facts, suffers from material illegality and irregularity, therefore, prayed that on acceptance of instant appeal and application for condonation of delay, judgment, decree and order dated 23.02.2024 of the learned trial court may be set-aside, the case in hands may be remanded and they may be granted opportunity to produce the evidence so that their suit may be decided on merits.

Learned counsel for respondents refuted the arguments of learned counsel for appellants and argued that learned trial court has properly appreciated the evidence and record on file and did not commit illegality in passing the impugned order; therefore, prayed for dismissal of appeal.

Viewing the arguments of learned counsel for parties and record on file, this is held that Article 152 of The Limitation Act, 1908 provides 30 days period for preferring an appeal to the Court of a District Judge from the date of the decree or order appealed from. This is important to note that Section 12 of the Act *ibid* provides exclusion of time in legal proceedings according to which in computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. This is also important to note that Section 5 of the Act *ibid* provides the extension of period in certain cases, according to which any appeal or application for a revision or a review or judgment may be admitted after period of the limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

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Perusal of record shows that the learned trial court has passed the impugned order on 23.02.2024; thus, 30 days period of limitation provided for preferring an appeal against the impugned order shall start computing from 24.02.2024, day following the order was passed, which lasted on 24.03.2024 (as February was a leap-year), however, appellants have applied for attested copies on 21.03.2024, whereas, obtained copies on very day of presentation of application and filed the appeal on 27.03.2024 with delay of three days along with application to condone the delay by advancing three reasons; first that a person had died in quomi war, second due to ignorance of the appellants and third due to personal engagements of the appellants. All three reasons advanced by appellants are contradictory in itself and not confidence inspiring. Beside, ignorance of law is no excuse while personal engagements cannot be held a valid justification as there would hardly any person not engaged in anywhere; therefore, the application for condonation of delay cannot be considered for above stated reasons.

If the reasons advanced by appellants are conceded and limitation period is condoned, even then, record speaks volume about the delinquent attitude of the appellants towards the court direction. The order sheet no. 24 dated 14.04.2023 clearly provides that the right of production of evidence by appellants had also been earlier dismissed by invoking the provision of Order XVII Rule 3 CPC by the learned trial court, however, against the said dismissal order, the appellants had filed a civil appeal no. 21/13 of 2023 on 16.06.2023, which was allowed by my learned predecessor in the office on 03.11.2023 and remanded the case to learned trial court with observation that the appellants shall appear before the learned trial court on 11.11.2023 with complete evidence along with the counsel to ensure the recording of evidence without further delay, however, on the given date, the appellants

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remained absent and the learned trial court while taking lenient view issued them notice. Even, after their appearance, the learned trial court has offered them many opportunities to record evidence, however, the evidence was not recorded and date was adjourned on some occasions due to the absence of evidence and on some occasion due to the absence of their counsel. Finally, learned trial court has issued them fresh notice under Order XVII Rule 3 CPC that was also extended but appellants failed to record the evidence and the court has finally struck off their right of evidence and dismissed the suit, which was aptly in accordance with law.

In the wake of above discussion, it is held that the learned trial court has committed no error, wrong or illegality in passing the impugned order and has rightly struck off their right of evidence and dismissed the suit, hence, the impugned order dated 23.02.2024 of the learned trial court is upheld and appeal in hands dismissed being bereft of merits.

Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

The requisitioned record along with copy of this order sent to the learned trial court and file of this court consigned to record room after necessary completion and compilation.

**Announced**  
07.06.2024

  
**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, if any found.

**Announced**  
07.06.2024

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