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

Civil Revision No. 04/12 of 2024

Date of institution: 20.03.2024

Date of decision: 02.07.2024

Date of consignment:

Sakhi Badshah son of Jan Badshah and two others residents of Quom Mishti Tappa Darwi Khel Zawan Dak Khana Mishti Mela, Lower Orakzai (petitioners/plaintiffs)

Versus

Aqal Shah son of Eid Bar Shah resident of Quom Mishti Tappa Darwi Khel Zawan Dak Khana Mishti Mela, Lower Orakzai and twenty others (respondents/defendants)

JUDGMENT

Through this judgment I shall decide a civil revision filed by petitioners against respondents under section 115 of The Civil Procedure Code, 1908 challenging therein the judgment and order dated 15.03.2024 of the learned Civil Judge-II, Kalaya, Orakzai passed in a civil suit, whereby, he has dismissed their application aimed at to summon Eman Shah and Fateh Khan, respondents/defendants in suit, as court witnesses.

Concise facts of the case are that petitioners have filed a civil suit against respondents alleging that parties at dispute were the legal heirs of Muhammad Rasool, who had six sons; that one of his son Mastan Gul had died issueless in 2016; therefore, the remaining five sons of Muhammad Rasool were entitled to the legacy of Mastan Gul; that in 2001, parties at dispute had enmity with third party and compensation of Rs. 200,000/- was fixed on them by elders of Orakzai tribe to resolve the animosity; that due to poverty factor, parties at dispute had decided that whoever had paid the compensation amount, the complete share of Mastan Gul measuring around ten kanal consisting of five fields, the suit property, shall be treated

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as the ownership of that person on demise of Mastan Gul; that in those days, petitioner no. 1 was retired from the service and had received the pension; therefore, he and other petitioners have gathered the money and paid compensation to the elders; therefore, petitioners were entitled to the whole share of Mastan Gul; that earlier Mastan Gul resided with his father and on demise of their father, he lived with respondents/defendants no. 1-3; therefore, when the petitioners have asked respondents/defendants no. 1-3 for delivery of suit property in 2017, they have used dilly dally tactics and recently refused; that respondents/defendants no. 1-3 were cultivating the suit property and earning Rs. 400,000/- an year; therefore, respondents/defendants no. 1-3 were entitled to retain Rs. 200,000/- per annum being cultivators, whereas, they were bound to pay Rs. 200,000/- per annum to petitioners as their share being owners; therefore, petitioners have prayed for declaration of their title to the suit property coupled with decree for possession and recovery of Rs. 200,000/- an year on rendition of accounts; that petitioners have also prayed for decree for permanent and mandatory injunctions, hence, the suit.

On receipt of plaint, respondents were summoned. Respondents no. 11, 12, 15, 16, 20 & 21 (defendants # 12, 13, 17, 18, 22, 23) had submitted cognovits in favor of petitioners, while, defendants no. 1-3,5-11, 15-16 contested the case and filed written statement. They have raised various legal and factual objections in written statement, which were reduced into different issues, whereat, parties led evidence, as evident from impugned order, and case was fixed for arguments. Petitioners, however, instead of arguing the case, filed application for summoning Eman Shah and Fateh Khan as court witnesses, to which the contesting respondents submitted written reply. The learned trial court heard the arguments and dismissed the application through order dated 15.03.2024.

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Petitioners feeling aggrieved impugned herein the dismissal order. Learned counsel for petitioners while reiterating the facts of the case and contents of revision petition argued that impugned order of the learned trial court is wrong, against the law and facts. He added that Eman Shah and Fateh Khan are God fearing and pious persons, who do not lie and once they turned up before the court for evidence, the issue shall be resolved. During arguments, he stated at the bar that both these persons/defendants have not issued any special power of attorney in favour of anyone; therefore, prayed that on accepting the instant revision, judgment and order of the learned trial court may be set aside and on allowing their application the respondents/defendants Eman Shah and Fateh Khan may be summoned as court witnesses.

Learned counsel for respondents refuted the arguments and argued that the learned trial court did not commit any error, misreading or non-reading of evidence; therefore, prayed for dismissal of revision petition.

Arguments heard and record perused.

In the wake of arguments advanced by learned counsel for parties and record available on file, it is held that undoubtedly law provides the adjudication of cases on merits by leaving no stone unturned and to offer full and equal opportunity to all the parties to present their case. Here the contention of petitioners is a bit different and unique than the general cases because here the petitioners intend summoning of Eman Shah and Fateh Khan, one of respondents/defendants, as court witnesses on sole ground that they are pious, God fearing and will speak truth before the court. Even, the petitioners have raised objection on special power of attorney submitted by them on the ground that they have not authorized anyone to represent them before any court of law. Be that as it may, it is an admitted fact that every party has to prove his case by producing cogent and reliable

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evidence and he cannot rest his claim on the weaknesses and shortcomings of the opposite party. Since, the burden of proof rested on the petitioners; therefore, both these witnesses being respondents/defendants cannot be compelled to appear as court witnesses and depose against their cause.

In view of above it is held that learned trial court did not commit any illegality in passing the impugned order and exercised jurisdiction vested in him absolutely in accordance with law, therefore, order dated 15.03.2024 of the learned trial court is upheld and revision dismissed. It is, however, added that if petitioners have any objection about the issuance of special power of attorney by Eman Shah and Fateh Khan, respondents/defendants, in favour of Aqal Shah, they can apply to the learned trial court to summon both of them in persons and verify this fact from them to remove any doubt, where after, the learned trial court may proceed in accordance with law. Parties have to bear costs of their proceedings.

Copy of this order is placed on record of learned lower court, where after, the requisitioned record, if any, be returned and file of this court consigned to record room after 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.



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