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

Civil Revision No. 06/12 of 2024

Date of institution: 20.05.2024

Date of decision: 02.07.2024

Date of consignment:

Azeem Khan son of Syed Nabi resident of Quom Bar Muhammad Khel Village Sara Khona District Orakzai presently Metha Khel, Tehsil and District, Kohat (petitioner/defendant)

Versus

Muhammad Rafique son of Muhammad Jan resident of Quom Bar Muhammad Khel presently Maidano Banda, Tehsil and District Hangu and eight others (respondents/plaintiffs)

**JUDGMENT**

Through this judgment I shall decide a civil revision filed by petitioner against respondents under section 115 of The Civil Procedure Code, 1908 challenging therein the judgment and order dated 03.04.2024 of the Court of learned Civil Judge-II, Kalaya, Orakzai passed in petition no. 2/12 (2) CPC of 2023 whereby he has dismissed the petitioner's petition filed under section 12 (2) of The Civil Procedure Code, 1908 being not maintainable and devoid of merits.

Concise facts of the case are that respondents have filed a civil suit no. 18/1 of 2021 against petitioner wherein contended that landed property named "Ghuaz Patay" measuring around 3 kanal situated in Quom Bar Muhammad Khel Village Sra Khona, District Orakzai, the suit property, was their ancestral ownership; that they had acquired a Belarus Tractor, Fecto Belarus Tractor Limited on the basis of their ownership title in the suit property; that petitioner has no concern with the suit property nor did he has purchase it from them but he has not only made forcible possession over the suit property but also cultivated the wheat crops in it; thus, they have prayed for decree to declare their title of the suit property coupled with decree for possession, permanent and mandatory injunctions.

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On receipt of suit, the learned trial court has summoned petitioner. On 31.05.2023, respondent no. 1 in person and as a special attorney for the rests of respondents had brought into the notice of the learned trial court that they had patched up the matter with petitioner and in that respect submitted compromise deed with prayer of dismissal of suit as withdrawn. Consequent upon this, the learned trial court recorded the statement of special attorney for respondents, brought on file the copy of compromise, Exh.PA, and dismissed their suit as withdrawn in the simplicitor. On coming to know about withdrawal of suit by respondents by mentioning the fact of compromise, the petitioner has filed a petition under section 12 (2) of The Civil Procedure Code, 1908, wherein, alleged that he had no concern with the alleged compromise nor did record any statement before the court in respect of compromise nor did sign the compromise, therefore, alleged that bringing of compromise on the record and in the statement of respondent no. 1 in persona and special attorney of the respondents was result of fraud and misrepresentation etc.; therefore, prayed to set-aside the impugned order to the extent of reference and use of words of compromise from the statement of respondent no. 1 and order of the learned trial court, whereas, to keep intact the withdrawal order. The learned trial court fixed the case for arguments on maintainability of the petition and after hearing parties, dismissed the petition being not maintainable and devoid of merits through order dated 03.04.2024.

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Petitioner being not satisfied impugned herein the order of learned trial court by alleging it wrong, against the law, facts and untenable in the eyes of law. He alleged that learned trial court has committed illegality and material irregularity in exercise of jurisdiction vested in it; therefore, prayed that on acceptance of instant revision, judgment and order dated 03.04.2024 of the learned trial court may be set-aside to the extent use of wordings of compromise from the statement of respondent no. 1 and order of the learned trial court and to keep intact the withdrawal order.

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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 there is no second view that the respondents have filed a civil suit against petitioner, which the earlier had withdrawn with assertion that a private compromise had been effected between the parties at dispute through intervention of elders of the locality and in this respect compromise deed was brought on file. The record speaks that the statement of Muhammad Rafiq, respondent no. 1, was recorded in person and as special attorney for other respondents that explicitly provides the reference of compromise deed, Exh.PA. Likewise, learned trial court has also repeated the above facts in its order and dismissed the suit of respondents as withdrawn in simplicitor and not on strength of compromise. Although, the learned trial court through impugned order has held that he has dismissed the suit as withdrawn in simplicitor and no decree was passed in favour of respondents, but at the same time, learned trial court through impugned order has not only held the exhibition of compromise deed in the presence of the petitioner or his not denying the execution of compromise or non-production of counter document/oral proof or compromise deed in support of his stance with regard to the terms and conditions of compromise previously effected between the parties, which directly infers the consent of petitioner in execution of the compromise; therefore, availability of the compromise deed on file and findings of the learned trial court in the impugned order can be used against petitioner at any time and before any forum. Besides, the compromise deed, Exh.PA, does not provide signature/thumb impression of the petitioner on it, therefore, he has genuine fears to challenge its sanctity at this stage, which will also avoid future litigation, if any. The statement of petitioner has also not been recorded by the learned trial court to counter check the genuineness of execution of compromise between the parties; therefore, if this question is left unaddressed, it will play an estoppel against the petitioner in future.

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In the wake of above discussion, it is held that the learned trial court has erred in reaching to the just conclusion of the case and failed to exercise the powers vested in it; therefore, on allowing the civil revision petition in hands, the impugned order dated 03.04.2024 is set-aside and 12 (2) CPC petition filed by petitioner is not only held maintainable but also accepted for above discussed reasons in the larger interest of justice and withdrawal of the suit order dated 31.05.2023 is set-aside, the original suit is remanded to learned trial court with direction to inquire from the respondents/plaintiffs that whether they still wish the dismissal of suit as withdrawn in simplicitor without brining on file the compromise deed or not. If, respondents still desire to exhibit compromise deed or make it part of file, then, learned trial court must record the joint statement of parties at dispute (or their special attorneys, as the case may be) and decide the withdrawal of suit application afresh or proceed with the case in accordance with law.

Parties are directed to appear before the court of learned Civil Judge-II, Kalaya Orakzai on 10.07.2024. 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 necessary completion and compilation.

**Announced**  
02.07.2024

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

**CERTIFICATE**

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

**Announced**  
02.07.2024

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