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

Civil Appeal No. 11/13 of 2024

Date of institution: 02.05.2024

Date of decision: 03.07.2024

Date of consignment:

Jan Muhammad son of Mastan Shah resident of Qoum Mishti Tappa Darwi Khel, Shaho Khel, Tehsil Central Orakzai and eleven others (appellants/objectors/defendants)

Versus

Rafiullah son of Khuwaja Muhammad resident of Quom Mishti, Tappa Darwi Khel, Badgor Tehsil & District Orakzai and four others (respondents/plaintiffs)

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

JUDGMENT

Through this judgment I will decide appeal preferred by appellants against respondents challenging the judgment and order dated 29.04.2024 of the Court of learned Civil Judge-I, Kalaya Orakzai, whereby, he has dismissed the objection petition of petitioners.

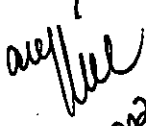
Concise facts of the case are that on 07.11.2019, the respondents/plaintiffs had file a Civil Suit No. 69/1 of 2019 before the court of the then learned Civil Judge-I, Orakzai (at Camp Court, Kalaya) against appellants/defendants, wherein, contended that landed property including a built-up house situated in Tandori Chan Zer Levi Checkpost Shaho Khel, a decretal/suit property, was their ownership, which their ancestors had delivered to the ancestors of appellants/defendants for cultivation; that they had filed an application to Assistant Political Agent, Lower Orakzai to declare them the owners of decretal/suit property and deliver them the possession, whereat, a

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jirga was held, however, appellants/defendants refused the jirga decision and they were declared owners of the decretal/suit property and order dated 10.11.2014 was passed for eviction of appellants/defendants from the suit property; that said decision was also maintained by Commissioner Kohat, whose decision was challenged before FATA Tribunal, Peshawar, who set-aside the orders with direction to frame issues and decide the case afresh; that powers of Political Agents were curtailed and the suit was transferred to learned Civil Judge-II, Orakzai, where the Civil Suit No. 19/1 instituted on 25.06.2019 was withdrawn on 25.09.2019 with permission to file fresh suit whereat this suit was filed; that respondents/plaintiffs were lawful and legal owners of the decretal/suit property and appellants/defendants had no concern with it; therefore, respondents/plaintiffs have prayed for decree to declare them owners of decretal/suit property coupled with the decree for possession, permanent and mandatory injunctions.

On receipt of plaint, the appellants/defendants were summoned by the learned trial court. They appeared and filed a joint written statement, wherein, raised various legal and factual objections, which were reduced into different issues by the learned trial court and parties led the evidence. The learned trial court heard the parties and finally decreed the suit in favour of respondents/plaintiffs on 21.12.2021. Being aggrieved from the verdict of learned trial court, on 26.01.2022 appellants/defendants had filed a Civil Appeal No. 15/13 of 2022 before this court, which was dismissed on 08.06.2022 by my learned predecessor in office. On 16.6.2022, respondents/plaintiffs have filed a civil execution petition to execute the court decree but before the warrant of possession in respect of decretal/suit property could have been issued, on 30.03/2024 appellants/defendants have filed an Objection Petition No. 06/06 of 2024 before the learned executing court.


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In objection petition, appellants/defendants raised different pleas *inter-alia* with assertions that respondents/plaintiffs did not clearly mention the full details of boundaries/limits of decretal/suit property in the plaint, whereas, suit was also not maintainable due to non-joinder and misjoinder and necessary parties; therefore, prayed that the execution petition was not maintainable, which may be dismissed. The learned trial court received the written reply from respondents/plaintiffs and on hearing parties dismissed the objection petition with costs of Rs. 5,000/- on 29.04.2024.

Being not contended, the appellants/defendants have impugned the dismissal order dated 29.04.2024 of the learned executing court through the instant appeal. Respondents/plaintiffs were summoned.

Arguments heard and record perused.

Learned counsel for appellants/defendants argued that the impugned order of the learned trial court is illegal, against the law and facts. He has further reiterated the facts of objection petition and prayed that on accepting this appeal, impugned judgment and order of the learned trial court may be set-aside and the execution proceedings may be dropped.

Learned counsel for respondents/plaintiffs refuted the arguments of learned counsel for appellants/defendants and argued that learned trial court has properly appreciated the evidence and record on file and committed no illegality or irregularity in passing the impugned order; therefore, prayed for dismissal of appeal with heavy costs.

Viewing the arguments advanced by learned counsel for parties and record on file, this is held that admittedly the appellants/defendants have contested the suit before the learned trial court, which was not only decreed by the learned trial court in favour of respondents/plaintiffs but the verdict was also upheld in civil appeal filed by appellants/defendants. The objection

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of appellants/defendants regarding non-joinder and misjoinder of necessary parties to the suit at this stage is baseless because they had already taken this ground in paragraph no. 8 of the preliminary objections, which was not considered and case was decreed. Had they any objection about this, they must have raised this objection in the earlier filed civil appeal but they have failed and the said civil appeal was also dismissed being meritless.

As far objection of appellants/defendants about non-mentioning of full description/detail/particulars of the decretal/suit property is related, it is held that there is admittedly no land revenue record or settlement record of the district Orakzai so far and here the landed properties are known from its local names as the one given in the heading of plaint. Besides, had they any objection about the description or particulars of the decretal/suit property, they must have raised it at the earliest in their written statement but there is no objection as such found there. Importantly, appellants/defendants while submitting the written statement have categorically addressed the wordings "suit property", which avails that decretal property intended by respondents/plaintiffs is clear to appellants/defendants and they have to return the same to respondents/plaintiffs, however, they have filed this objection petition just to prolong the execution proceedings and abuse the process of law, which is also evident from admission of appellants/defendants, when their statement was recorded through Jan Muhammad (DW-1), where, he clearly stated that if the court passed the decree, even then, they will not deliver the possession of decretal/suit property to respondents/plaintiffs, which shows nothing but their wickedness/stubbornness. Likewise, the learned trial court while making reliance on judgments of the superior court has also rightly held that executing court is not bound to hold regular inquiries by framing issues and providing opportunities to parties to produce evidence.

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In the backdrop of above findings, it is held that the learned trial court has rightly dismissed the objections raised by appellants/defendants and the impugned order does not warrant interference of this court in its appellate jurisdiction; therefore, I see no force in the appeal in hands and conclude that no irregularity or illegality has committed by the learned trial court while passing the order dated 29.04.2024, which is upheld and appeal in hands dismissed with the costs of Rs. 20,000/- to be paid by appellants/defendants to respondents/plaintiffs.

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.



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CERTIFICATE

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



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