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IN THE COURT OF SYED OBAIDULLAH SHAH,
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CASE NO. : 1/12 (2) OF 2024
DATE OF ORIGINAL : 07.05.2024
DATE OF DECISION : 31.07.2024

1. AQAL REHMAN S/O RASOOL GUL
2. MUBASHIR
3. ANWAR
4. WASEEM, ALL S/O MIR REHMAN,
ALL RESIDENTS OF CASTE MISHTI, MOZA JAMADAR MASI,
DISTRICT ORAKZAI

.....(PETITIONERS)

-VERSUS-

1. RASOOL GUL
2. HAMEED GUL
BOTH S/O SANJEED GUL, R/O CASTE MISHTI, MOZA
JAMADAR MASI, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present: Zahid Bashir and Insaf Ali Advocates for petitioners.
: Sardar Ali Khan Advocate for respondent no. 1.

JUDGEMENT
31.07.2024

Petitioner filed the instant petition under section 12 (2) of the Civil Procedure Code (CPC) for setting aside impugned judgment/decreed dated 16.05.2023 of this court, obtained by misrepresentation or fraud committed with respect to the subject matter of the suit.

- (2). In a suit before the learned trial court, the respondent no. 1 (hereinafter referred to as plaintiff) has sought declaration-cum-perpetual and mandatory injunctions to the fact that the unpartitioned suit property measuring 30 jeribs as detailed in the headnote of the plaint, being inherited from their father, is jointly owned by the plaintiff and respondent no. 2 (hereinafter referred as defendant) in equal shares. That the defendant has already


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sold his share of 08 jerib property in Kohat along with a house, to the plaintiff for Rs. 14 lakhs. That a government school has been constructed in a jointly owned property of Gande Patey benefitting the defendant and his wife through employment; though the plaintiff claims entitlement to one of these employments. That the defendant is bent upon selling the suit property, cutting trees or making construction over the suit property and handing over the possession of land of Rawaz Tange and Palan Patey to Sucha Gul and Juma Gul, the uncle of parties. The plaintiff has also sought rendition of accounts of the cash amount in possession of the defendant as legacy of the father of parties. In a nutshell, plaintiff sought possession through partition of the suit property. The defendant was summoned who appeared before the trial court and contested the suit on various legal and factual grounds. Pleadings of the parties were culminated into following issues;

- I. Whether the plaintiff has got a cause of action?
- II. Whether the plaintiff is estopped to sue?
- III. Whether the suit of the plaintiff is time barred?
- IV. Whether the suit property measuring 30 jeerab comprising of one house and baithak situated at Jamadar Nawasi, Orakzai is the joint undivided ownership of the plaintiff and defendant?
- V. Whether the suit property measuring 08 jeerab comprising of one house situated at Baqizai, Kohat was purchased by the father of the plaintiff and defendant and it was partitioned between plaintiff and defendant?


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- VI. Whether defendant sold his share in 08 jeerab suit property situated at Kohat was purchased by plaintiff from defendant in lieu of Rs. 14 lacs?
- VII. Whether the suit property situated at Jamadar Nawasi is the joint undivided ownership of the parties?
- VIII. Whether the defendant has illegally and wrongfully occupied the entire inherited property situated at Jamadar Nawasi?
- IX. Whether the plaintiff is entitled to half share i.e., 6.5 lacs in the inherited cash amount of Rs. 13 lacs?
- X. Whether the inherited property has already been partitioned privately between the parties?
- XI. Whether suit of the plaintiff is bad due to mis-joinder and non-joinder of the parties?
- XII. Whether the predecessor of the parties namely, Sajid Gul had transferred 03 jeerab to his grandchildren/sons of the plaintiff namely Aqal Rehman and Meer Rehman and in the name of defendant?
- XIII. Whether the sons of the plaintiff and defendant jointly purchased the suit house from their uncle?
- XIV. Whether the plaintiff is entitled to the decree as prayed for?
- XV. Relief.

(3). Parties were given opportunity to produce their evidence who accordingly adduced their respective witnesses whereafter, the learned trial court rendered a judgment which was challenged in this court as an appellant court and an impugned judgment/decree dated 16.05.2023 was passed wherein the suit of the plaintiff was partially decreed to the extent that the suit property is the legacy of the predecessor of parties which has been properly partitioned vide partition deeds of

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aggrieved of the impugned judgment/decreed, filed the instant petition.

- (4). I heard arguments and perused the record.
- (5). Perusal of the case file reveals that the instant petition has been filed by the petitioners based on fraud and misrepresentation, invoking section 12 (2) of the Civil Procedure Code (CPC) to the fact that they are entitled to their due shares devolved upon them from their forefather through two different partition deeds besides claimed that they have not been arrayed in the suit as a necessary party which shattered their legal rights. However, the record shows that petitioner no. 4, Waseem Ahmad s/o Mir Rehman (grandson of the plaintiff) appeared before the learned trial court and provided testimony as DW-4 on 04.08.2022 in support of the defendant's claim, which clearly depicts that the petitioners were in knowledge of the suit and they could have filed an application for their impleadment as a necessary party in the suit. Ironically, he has confessed before the trial court in his statement that his uncle Aqal Rehman, petitioner no. 1, appeared before the court prior to his departure to Bahrain. He stated that;

"اور گواہی کے لیے میرے چچا پچھلی پیشی پر آیا تھا مگر اب وہ بحرین باہر ملک چلا گیا ہے۔"

The presence of petitioner no. 1 during trial also

Syed Obaidullah Shah indicates his awareness of the suit. The petitioners have buried
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their heads in the sand at the time of trial proceedings despite having knowledge of the same.

Moreover, the defendant claimed that the suit property had been privately partitioned by their predecessor during his lifetime, allocating 03 jeribs to petitioners Aqal Rehman and the children of Mir Rehman, and 03 jeribs to himself, relying on a partition deed dated 06.06.1993; however, the defendant made several admissions confirming the execution of both the documents. Furthermore, Abdul Malik, a jirga member who had scribed the partition deed dated 06.06.1993, confirmed that the suit property was partitioned between the plaintiff, the defendant and their father, Saheed Gul. Similarly, this fact was also corroborated by DW-3, a witness to the jirga, in his cross examination. On the other hand, this partition deed has categorically been denied by the plaintiff; however, admitted that the suit property has been partitioned between him and the defendant.

The defendant, during the course of trial, has also produced a partition deed dated 23.07.2008 vide which the suit property was again divided between him and the plaintiff after the demise of their father. DW-5 testified to this deed during cross examination though it did not clarify the petitioners' share in the suit property.

It is also worth mentioning that petitioner no. 1 is the son of the plaintiff while the remaining are his grandsons. In

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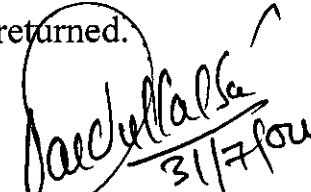
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Islamic law, under Sharia, a father's property remains his ownership while he is alive and inheritance rules only come into play after his death; therefore, it is implausible that the plaintiff's property could be transferred to his sons during his lifetime without his consent. Remarkably, the counsel who represented the defendant against the plaintiff in a suit before the trial court, is now advocating the 12 (2) petition for the plaintiff's sons, indicating that the counsel was fully aware of the suit property's status and the legal intricacies involved.

(6). Hence, in view of what is discussed above, it is held that the petitioners were well aware of the trial proceedings involving the suit property, yet they had not filed any application for their impleadment in the suit before the trial court. Thus, the instant petition filed u/s 12 (2) CPC is hereby dismissed being meritless. No order as to cost. Judgment announced. File of this court be consigned to Record Room while record be returned.

Dated: 31.07.2024

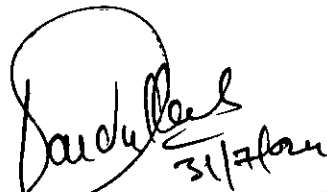

(SYED OBAIDULLAH SHAH)
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CERTIFICATE

Certified that this judgment consists of six (06) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 31.07.2024


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