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

Civil Appeal No. 05/13 of 2024

Date of institution: 26.02.2024

Date of decision: 03.09.2024

Date of consignment:

Ahmad Nzeer son f Muhammad Nazeer resident of Kach Banda, Hangu presently at Mian Gujar Garhi Peshawar & one other (appellants/plaintiffs)

Versus

Muhammad Shamim son of Muhammad Farid resident of Kach Banda, District Hangu and eight 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: 24.01.2024 of the Court of learned Civil Judge-I, Orakzai whereby he has dismissed the suit of appellants/plaintiffs.

Concise facts of the case as per averments of the plaint are that a landed property situated in Dabori near Farid Khan Mela, District Orakzai consisting of five fields, the suit property fully detailed in the headnote of the plaint, was joint ownership of ancestors of parties at dispute except the respondent no. 6; that suit property is not a purchased land of respondents no. 1-5 rather they were also recorded co-owners in the suit property to the extent of their shares; that respondents no. 1-5 have illegally claimed the suit property to be their exclusive ownership and in order to deprive them from their lawful right, they have collusively not only sold out the same to respondent no. 6 including their shares but have also delivered the latter the possession of the suit property; therefore, appellants have prayed for decree

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to declare them owners in possession of the suit property to the extent of their shares and not to sold out their shares to respondent no. 6 without their prior permission and consent; that appellants have also prayed for decree for permanent and mandatory injunctions so as to restrain respondents from making any sort of construction, changes etc. sale, transfer of suit property to anyone, hence, the suit.

Respondents were summoned by learned trial court.

Respondents no. 6 and 7 were placed ex-parte. Respondents no. 8 appeared through special attorney and respondent 9 appeared in person and their statements recorded, wherein, they endorsed no objection if the suit in hands is decided in favour of either party. Respondents no. 1-5 turned up and filed a joint written statement, wherein, raised various legal and factual objections *inter-alia* with facts that suit property was actually purchased by their father Muhammad Farid and sold out to respondent no. 6, who has made huge improvements in it and constructed a house therein by making investment; therefore, prayed for dismissal of the suit. Divergent pleadings of the parties were reduced into different issues by the court as below;

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1. *Whether the plaintiffs have got a cause of action?*
 2. *Whether the plaintiffs are estopped to sue?*
 3. *Whether the suit of plaintiffs is time barred?*
 4. *Whether the plaintiffs are co-sharers in the disputed property and defendants no. 1 to 5 have no right to sell out the same?*
 5. *Whether the suit property was purchased by the predecessor of defendants no. 1 to 5 namely Muhammad Farid?*
 6. *Whether predecessor of defendants no. 1 to 5 namely Muhammad Farid has himself sold out the suit property to defendant no 6 upon which has constructed a house?*
 7. *Whether the plaintiffs are entitled to the decree as prayed for?*
- Relief?*

Parties produced evidence. The learned trial court heard the arguments & dismissed the suit on 24.01.2024. Appellants being not contended with the decision, preferred instant appeal. Learned counsel for appellants while arguing narrated above facts of the case with assertion that order of the learned trial court is illegal, against the law and facts, unfounded, suffers from material illegality and irregularity, result of misreading and non-reading of evidence having been ignored the cardinal principles of natural justice, having not considered the record available on file, based on presumptions, speculations and capricious. On 08.03.2024, appellants have also filed application for permission to record the statements of Muhammad Riaz and Muhammad Danish as additional witnesses, to which the written reply was received and application was contested hotly; therefore, learned counsel for appellants has prayed that on accepting the instant appeal, judgment, decree and order of the learned trial court dated: 24.01.2024 may be set-aside and on allowing their application, the case in hands may be remanded to the learned trial court for recording additional evidences and then decide the same afresh.

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 committed no illegality or irregularity in passing the impugned order; therefore, not only prayed for dismissal of application but also the appeal with heavy costs.

Viewing the valuable arguments advanced by learned counsel for parties, evidence and record on file, it is concluded that there is admittedly no land settlement or revenue record of district Orakzai and the disputes between the parties are resolved on basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the

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courts; therefore, while deciding this appeal, the court has no other option but to base its findings on pleadings of the parties, oral or documentary evidence, if any, produced by the parties. This is surprising to note that appellants have alleged the suit property to be their ancestral property, which as per their version was joint and they were also recorded co-sharers in it, however, they did not bring on record a single document or recorded the statement of a single independent person to prove their stance. As stated above that there is no land revenue record in District Orakzai; therefore, the landed properties/fields here are given specific names, through which these are identified, which fact is also admitted by appellant (PW-1) in his cross-examination, however, he has also admitted that he has not given any name of suit field in the plaint. Moreover, contents of plaint provide that appellant has impugned only five fields with prayers of declaration, permanent and mandatory injunctions, whereas, in statement deposed that he has impugned eleven fields and prayed for partition of the suit property, which is contrary to his pleadings.

On the contrary, respondents no. 1-5 have recorded the statements of Muhammad Shafique (DW-1), who has clearly stated that the suit property was purchased by Muhammad Farid, father of respondents no. 1-4, from Muhammad Kaleemullah and later on sold out to respondent no. 6, while, Muhammad Nazeer, ancestor of appellants and respondents no. 7-9, has no concern with it. The evidence produced by respondents was not shattered by appellants.

As per evidence of respondents no. 1-5, the suit property was sold out by their father Muhammad Farid to respondent no. 6, who has allegedly constructed house thereat twenty years ago, whereas, appellant (PW-1) not only admitted that it is in possession of respondent no. 6 but also stated that he has visited the suit property for the last time in 2021, which avails that

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had he any objection on it, he must have approached to the proper forum much before filing of the instant suit.

Appellant (PW-1) has also produced an agreement deed, Exh.PW 1/1, which pertains to the landed property at Peshawar and has no concern with the suit property, however, perusal of agreement deed gives impetus to the contention of respondents no. 1-5 that appellants have filed the instant suit because they had demanded their share in the landed property situated at Peshawar.

Amazingly, Nadeem Muhammad was arrayed as plaintiff no. 2 in the main suit as well as appellant no. 2 in the instant appeal but admittedly he did not appear before the court as a witness nor did engage any counsel nor did appoint anybody his special attorney to contest the suit/appeal on his behalf but instead of this, he was arrayed as plaintiff/appellant in the suit. Likewise, appearance of respondent no. 8 through her special attorney and respondent no. 9 in person before the court and alleging that they have no concern/interest in the suit and their endorsing no objection on decree of suit in favour of either of the parties further draws an inference that suit property was not the joint ownership of ancestors of parties at dispute else they must have either claimed their shares in it or should relinquished their shares in favour of either of the parties.

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Although, appellants have filed application for permission to record the evidence of Muhammad Riaz and Muhammad Danish as additional witnesses, however, appellants has not given a single justification to grant them permission because neither they are the witnesses of any deed nor they have given any detail as to of what facts etc. they were witnesses. Besides, had they been witnesses of any fact, then, he must have produced them before the learned trial court at the time of recording the evidence.

In view of above facts, it is held that the appellants have failed to prove their case by producing cogent, reliable and confidence inspiring evidence on file; therefore, allowing them opportunity of leading additional evidence would be wastage of time of court and the parties, hence, the application is dismissed. So far merits of the appeal are related, it is held that learned trial court has decided the application aptly in accordance with the law & evidence on file and did not commit any illegality or irregularity warranting interference of this court, hence, the judgment, decree and order dated 24.01.2024 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
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CERTIFICATE

Certified that this judgment consists of six (06) pages, those are signed by me after necessary corrections, if any found.



Announced
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