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FORM "A"
FORM OF ORDER SHEET


IN THE COURT OF SYED ABAAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI

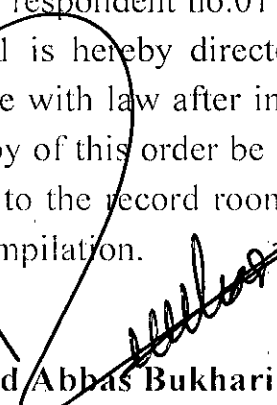
Serial No. of Order of Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of Parties or Counsel where necessary.
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Order No. 23	21.08.2024	<p>Parties present.</p> <p>Vide this order I intend to dispose of instant application filed under section 12(2) C.P.C. by petitioners Lahore Khan etc.</p> <p>Arguments already heard and record perused.</p> <p>Stance of petitioners: Petitioners have alleged in the instant 12(2) C.P.C. petition that previously impugned decree dated: 24.11.2016 was passed in favour of respondents by Assistant Political Agent Lower Orakzai. They further allege that they were not arrayed as necessary party to said case rather same was between respondent no.1 and respondent no.02. Petitioners further allege that now respondent no.01 is imposing and implementing impugned decree against the petitioners also.</p> <p>Stance of Respondent no.01: Impugned decree and Judgment dated: 24.11.2016 was passed in accordance with law by APA Lower Orakzai and thus same was upheld by the court of learned District & Sessions Judge Orakzai vide Judgment dated: 19.03.2021. Instant 12(2) C.P.C. petition is badly time barred being filed after passing of about seven years of the impugned decree and judgment.</p> <p>Stance of Respondent no.02: Instant 12(2) C.P.C. petition is based on true facts. Impugned decree has no value in the eyes of law and further same is not executable. The case on the basis of which impugned judgment was passed, was instituted by respondent no.02, which was later on dismissed and thus no decree was passed.</p> <p>Court findings: Now on perusal of the available record and valuable assistance of learned counsels for the parties, this court is of the view that admittedly present petitioners were not arrayed as party to the suit filed before APA Lower Orakzai. Furthermore, respondent no.01 in his reply has neither stated that petitioners were</p>



21-08-2024

SYED ABAAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

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<p><i>Contind..... order No. 23</i></p> <div data-bbox="56 970 397 1449" style="position: absolute; left: 35px; top: 385px;">  <p>SYED ABBAS ZAIDARI Civil Judge, JM-II Tehsil Courts Kalaya</p> </div>	<p>21.08.2024</p>	<p>not necessary party to the suit or he is not implementing impugned decree against them rather had deposed that instant 12(2) C.P.C. petition is time barred.</p> <p>It is also pertinent to mention here that as for as the execution of instant decree is concerned, respondent no.01 previously filed execution petition for execution of impugned decree before learned Civil Judge-II Orakzai and same was dismissed being not maintainable vide order dated: 12.03.2020, with the reason that there is no decree before the court for execution. It is also pertinent to mention here that respondent no.01 filed a subsequent execution petition before learned Civil Judge-I Orakzai and same was also dismissed being not maintainable as there was no decree before the court for execution. It is also necessary to mention here that perusal of the impugned order dated:24.11.2016 of APA Lower Orakzai would reveal that neither any evidence was recorded by him nor any grounds for decision were mentioned therein rather the case was decided in favour of respondent no.01 on the basis of Jirga verdict.</p> <p>As for as Judgment dated: 19.03.2021 of learned District & Sessions Judge Orakzai is concerned, vide said Judgment learned Appellate court has maintained Judgment and decree dated: 21.01.2021 of learned trial court, whereby application filed by present respondent no.1, under Order VII, Rule 11 C.P.C, was allowed and suit filed by father of present respondent no.02 was dismissed. Hence said Judgment of learned Appellate court was not in respect of impugned decree. Furthermore, if it is presumed that learned Appellate court vide its Judgment dated: 19.03.2021 has maintained impugned decree, in circumstances neither present petitioners were not present before the learned Appellate court nor any 12(2) C.P.C petition was pending before Appellate court while presently petitioners have challenged impugned decree being obtained through fraud and misrepresentation by filing instant 12(2) C.P.C. petition.</p> <p>It is also pertinent to mention here that as respondent</p>

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<i>Contind..... order No. 23</i>	21.08.2024	<p>no.01 use impugned decree against present petitioners while he previously did not impleaded them in suit, which shows fraud on the part of respondent no.01. Furthermore, there is no decree in field for execution.</p> <p>Verdict: In light of above discussion, instant application filed under section 12(2) C.P.C. by petitioner Lahor Khan is hereby allowed and order dated: 24.11.2016 of APA Lower Orakzai is hereby set aside. No order as to cost. Suit previously filed by respondent no.01 is hereby restored and respondent no.1 is hereby directed to file amended plaint in accordance with law after impleading all the necessary parties. Copy of this order be placed on main file. File be consigned to the record room after its necessary completion and compilation.</p> <p><u>Announced</u> 21.08.2024</p> <p style="text-align: right;"> Syed Abbas Bukhari Civil Judge-II Kalaya Orakzai</p>