

In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

IN THE COURT OF BAKHT ZADA
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI
AT BABER MELA

CIVIL APPEAL NO. : 05/13 OF 2024
DATE OF ORIGINAL INSTITUTION : 13.09.2024
DATE OF PRESENT INSTITUTION : 16.10.2024
DATE OF DECISION : 30.10.2024

1. SYED LAL SAID SHAH S/O SYED IMAM SHAH,
2. SYED SHAH HUSSAIN JAN,
3. SYED SHAH SYED JAN,
4. SYED ASGHAR KHAN SONS OF SYED MIR QASIM JAN,
5. SYED AKBAR JAN,
6. SYED HUSSAIN ALI SHAH SONS OF ZAMIN JAN,
7. SYED FARHAT ABBAS AND
8. SYED MUHAMMAD ABBAS SONS OF SYED ABBAS JAN ALL RESIDENTS OF SIPOYE, MITHA KHAN, ALL RESIDENTS OF TEHSIL LOWER, DISTRICT ORAKZAI.

.....(APPELLANT)

-VERSUS-

1. AKSAR ALI,
2. SEHWAR ALI SONS OF FATEH AMEER,
3. HASHMAT ALI,
4. REHMAT ALI SONS OF HASSAN MIR,
5. MAZHAR ALI,
6. KAUSAR ALI AND
7. IMTIAZ ALI SONS OF JANAN MIR ALL RESIDENTS OF SIPOYE, PRESENTLY MARAI, TEHSIL & DISTRICT KOHAT.

.....(RESPONDENTS)

Present: Sanaullah Khan Advocate for appellants
Syed Hamza Gillani Advocate for respondents

JUDGEMENT

30.10.2024

Impugned herein is order/judgement dated 10.08.2024

of learned Civil Judge-II, Orakzai vide which suit of the appellants/plaintiffs was dismissed.

(2). According to the appellants/plaintiffs, the order of the learned Civil Judge-II, Kalaya, Orakzai is against law and facts

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and that the court has not taken into consideration the record of the case and despite recording the statement of appellants/plaintiffs in the case the suit of the plaintiff was dismissed without waiting for recording remaining evidence. It is further alleged that valuable rights of the appellants/plaintiffs are involved in the suit and the same was dismissed in haste and hurry, therefore, the impugned order is liable to be set aside.

(3). The respondents/defendants were summoned, who appeared along with counsel. Record of the main suit already requisitioned. Arguments heard.

(4). The perusal of record shows that the suit was instituted by the appellants/plaintiffs on 15.08.2022 and after completion of attendance and submission of written statement, issues in the case were framed by the learned Civil Judge-II, Kalaya, Orakzai on 13.07.2023. After framing of issues, the appellants/plaintiffs were directed vide order sheet No. 20, dated 19.08.2023 to produce plaintiff evidence on 02.09.2023, but the date was adjourned with the mutual consent of the parties. On the subsequent date evidence of the appellants/plaintiffs was present, but could not recorded due to absence of the counsel for the respondents/defendants. On next date the learned Judicial Officer was on casual leave and on the subsequent date again i.e., on 14.10.2023, the evidence of the plaintiffs was again present, but was not recorded due to

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adjournment sought by the counsel for the respondents/defendants and since then civil adjournment have been sought either by the counsel for the appellants/plaintiffs or counsel for the defendants and even on the joint request of the counsels for the parties. Such the delay in recording plaintiffs evidence cannot be attributed to the appellants/plaintiffs alone rather the adjournments were made due to different reasons. It is on record that appellants/plaintiffs have produced their evidence before the court several times before issuance of notice u/o XVII Rule 3 CPC. Valuable rights of the parties are involved in the instant case and determination of the same is not possible without recording evidence and providing opportunity of cross-examination to the opposite counsel. The superior courts have held in their various judgments that cases be decided on its merits and technicalities shall be avoided. The evidence of the plaintiff was also present on second last date before dismissal of his suit meaning thereby that the appellants/plaintiffs is willing to produce their evidence; therefore, without further discussing pro and contra stances of the appellants/plaintiffs and respondents/defendants in favour and against the appeal, I hereby accept the instant appeal and set aside order /judgment dated 10.08.2024 of the learned Civil Judge-II, Kalaya, Orazkai with cost of Rs. 10,000/- which is to be paid by the appellants/plaintiffs. The case is remanded back to the trial court with direction to decide the same after

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providing full opportunity for recording evidence to the parties.
Requisitioned record be transmitted back to the court concerned
by placing copy of this order. The parties are directed to appear
before the court of learned Civil Judge, Kalaya on 16.11.2024.
Record of this court be consigned to the record room within the
stipulated period.

Announced
30.10.2024



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(Bakht Zada)
Addl: District Judge-I, Orakzai
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CERTIFICATE

Certified that this judgment consists of four (04)
pages. Each page has been read, corrected wherever
necessary and signed by me.

Dated: 30.10.2024


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(Bakht Zada)
Addl: District Judge-I, Orakzai
at Baber Mela