

IN THE COURT OF BAKHT ZADA,
ADDL: DISTRICT JUDGE-I, ORAKZAI (AT BABER MELA)

CIVIL REVISION NO. : 01/12 OF 2024
DATE OF INSTITUTION : 06.09.2024
DATE OF TRANSFER IN : 09.10.2024
DATE OF DECISION : 12.12.2024

1. MUHAMMAD YOUSAF S/O TAJ GUL RESIDENCE OF QOAM
MISHTI, TAPPA DARWEE KHEL TEHSIL CENTRAL
DISTRICT ORAKZAI

.....(Appellant)

-VERSUS-

1. SYED RAZIQ S/O SAID ASGHAR
2. ABDUL MALIK S/O SAID ASGHAR
3. ABDUL KHALIQ S/O SAID ASGHAR
4. SAID ABDUL RAZIQ S/O SAID ASGHAR
5. MST. NOOR JAHAN W/O LAHOR KHAN
6. MST. BIBI SAKEENA W/O ABDUR RAUF
7. ABID ULLAH S/O KHURSHEED BEGUM
8. AMEEN ULLAH S/O KHURSHEED BEGUM
9. MUNAWAR KHAN S/O MERAN KHAN
10. ABDUR ZARI S/O MUHAMMAD REHMAN
11. DOCTOR KHAN S/O MUHAMMAD REHMAN
12. GHAFAR KHAN S/O MUHAMMAD REHMAN
13. MOMEEN KHAN S/O MUHAMMAD REHMAN
14. SHAFIQ KHAN S/O MUHAMMAD REHMAN
15. MUHAMMAD FAREED S/O MUHAMMAD REHMAN
16. MEHBOOB JAN S/O GHAZNI KHAN
17. MEER AFZAL S/O GHAZNI KHAN
18. AMAANULLAH KHAN S/O GHAZNI KHAN
19. RAB NAWAZ S/O JAFAR KHAN
20. KHAN WAZIR S/O JANAT SHAH
21. GULAN KHAN S/O JANAT SHAH
22. SARDAR KHAN S/O KHALIFA
23. HAJI SARDAR KHAN S/O MUQARAB KHAN
ALL R/O CASTE MISHTI, TAPA DARWEE KHEL TEHSIL
CENTRAL DISTRICT ORAKZAI.

..... (RESPONDENTS)

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JUDGEMENT
12.12.2024

Impugned herein is the order dated 17.08.2024 of learned Civil Judge-I, Tehsil Kalaya, District Orakzai vide which the learned trial court has dismissed the application of the appellant/defendant No.1 for rejection of miscellaneous application. Through the instant civil revision petition the

appellant/defendant prayed for setting aside the impugned order dated 17.08.2024 and dismissal of the miscellaneous application dated 12.08.2023.

- (2). Relevant facts of the case are that the respondents/plaintiffs have filed suit for declaration, permanent and mandatory injunction in respect of the suit property that they are coming as sole owners in possession of the suit property since their forefathers and they have made improvements in the suit property by spending a lot of money. That in the above mentioned suit status quo was granted in favour of respondents/plaintiffs by the learned trial court vide order dated 26.02.2024 against which the present appellants/defendant no.1 filed appeal and vide order dated 06.06.2024 of learned AD & SJ-II, Orakzai the status quo was vacated and order for construction on own risk and cost was issued. That the respondents/plaintiffs filed a miscellaneous before the learned trial court for pull to bits the constructions raised by the appellants/defendants during the existence of status quo. That the respondents/plaintiffs said miscellaneous application of the present respondents/plaintiffs is not based on facts and that no interference has been made with the suit property. That the status quo issued by trail court has become infructuous after the order dated 06.06.2024 of the learned AD & SJ-II, Orakzai. That proceedings with the said miscellaneous application by the trial court will be futile exercise and the appellants/defendants prayed for dismissal of the same.

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(3). Arguments heard and available record perused which shows that a suit for declaration, perpetual and mandatory injunction was filed in respect of the suit property by the present respondents/plaintiffs, wherein status quo was granted by the learned trial court vide its order dated 26.02.2024 on petition for temporary injunction, against the said order of the learned trial court miscellaneous appeal was filed and vide order dated 06.06.2024 the learned ADJ-II, Orakzai by setting aside the order dated 26.02.2024, allowed the onward constructions in the suit property with own risk and cost. The respondents/plaintiffs filed a civil miscellaneous application before the learned trial court for pull to bits the construction raised during the existence of status quo order. The present appellants/defendants after order dated 06.06.2024 of the learned ADJ-II filed an application for dismissal of the said miscellaneous application which was dismissed by the learned CJ-I, Kalaya vide its order dated 17.08.2024 with cost of Rs.2000/-. Against the said order the appellants/defendants have filed the instant civil revision. It is admitted fact that at present no status quo order is in field and the order dated 26.02.2024 vide which the status quo was granted by the learned trial court has already been set aside by the learned ADJ-II vide its order dated 06.06.2024 and thus the application filed by the respondents/plaintiffs for pull to bits the constructions made during the status quo order has become infructuous and it will be deemed that there was no order for status quo in the field at all. Furthermore, it will be a futile

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exercise to record evidence in the said miscellaneous application because now the order dated 06.06.2024 of the learned ADJ-II, Orakzai is in field and any construction allegedly made during the period will be deemed to have been raised with own risk and cost. The impugned order dated 17.04.2024 being devoid of merits is hereby set aside and the instant civil revision filed by the appellants/defendants is hereby accepted and resultantly the civil miscellaneous application dated 12.08.2023 stands dismissed. Requisitioned record be sent back to quarter concerned. Copy of this order be placed in original record while record of this court be consigned to record room within the stipulated time.

Pronounced:

12.12.2024

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(BAKHT ZADA)

Addl: District Judge-I, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages.

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

Bakht Zada
12.12.24

(BAKHT ZADA)

Addl: District Judge-I, Orakzai
at Baber Mela